

## NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

### NOTICE OF FINAL RULEMAKING

#### TITLE 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 19. STATE BOARD OF NURSING

#### PREAMBLE

1. **Sections Affected**  
R4-19-504
- Rulemaking Action**  
Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 32-1606(A)  
Implementing statute: A.R.S. § 32-1601(9)
3. **The effective date of the rules:**  
January 10, 1997
4. **A list of all previous notices appearing in the Register, addressing the final rule:**  
**Notice of Rulemaking Docket Opening:**  
2 A.A.R. 3596, August 16, 1996  
**Notice of Proposed Rulemaking:**  
2 A.A.R. 3832, September 6, 1996
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Audrey Rath, R.N.  
Nurse Practitioner Consultant  
Address: State Board of Nursing  
1651 East Morten, Suite 150  
Phoenix, Arizona 85020  
Telephone: (602) 255-5092  
Facsimile: (602) 255-5130
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**  
R4-19-504 is being amended to permit registered nurses who have received their nurse practitioner education and training at programs which are neither approved by the Board nor regionally accredited, e.g. a foreign nursing program, to become registered nurse practitioners. The amendment will permit such nurses to submit evidence to the Board for the purpose of determining whether the programs attended were substantially equivalent to the standards which must be met for a program to otherwise be approved by the Board.  
  
This amendment was originally made to the then-current R4-19-503, which was subsequently amended in another rule package which was approved by GRRC and in effect after this rule amendment was originally proposed. In that other rule package, some minor changes were made to the text and the Section was renumbered to R4-19-504. As a result, the text of the newly-amended and renumbered R4-19-504 is being used as the basis for the rule amendments in this final rule submission.
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**  
Not applicable.
8. **The summary of the economic, small business and consumer impact:**  
The economic impact is anticipated to be minimal. The proposed rule amendment will impact only a few registered nurses, as most will be certified as registered nurse practitioners under the current rules. The amendment allows registered nurses who received their practitioner education and training in a program other than a Board-approved program, or 1 conducted by a regionally accredited college or university, to be certified by providing documentation to the Board that the program taken meets the requirements of a Board-approved program. Few applications are anticipated. Thus, the costs to the Board for staff or Board time is minimal.

Impact on other governmental agencies is also expected to be slight. Impact on private and small businesses is expected to be isolated and generally minimal because of the very small number of registered nurses who will be affected by the rule change. Registered nurses affected by the rule change will save the significant educational costs involved in duplicating their training and will increase their incomes by being certified and employed as registered nurse practitioners in a more specialized scope of practice with increased authority. Consumer costs are unlikely to be affected because so few nurses are affected by the rule change.

**9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

The rule was renumbered from R4-19-503 to R4-19-504, and the newly-amended text of the now-current R4-19-504 was utilized instead of the former R4-19-503 as the basis of the amendments.

In R4-19-504(A)(2)(b), added "registered" before "nurse practitioner program".

In R4-19-504(A)(2)(c), replaced "was" with "is" in the 1st line; replaced the comma with a semicolon after "university"; replaced "and" with a "," after "transcript"; replaced "the" with "a" before "certificate"; added "registered" before "nurse practitioner program"; added "shows that the program" after "which"; added a colon after "was" and split the remainder of the sentence into 2 subsections, (i) and (ii); deleted "of"; capitalized "at"; replaced "nine" with "9"; replaced "duration and" with "length, and"; changed "include" to "Included"; replaced "professional nurses as" with "the applicant as a registered"; deleted the "s" from "practitioners"; and, added "program" after "which".

These changes were made for purposes of clarity, form, and consistency with changes made to the Chapter 5 rules which were before GRRC at its November meeting and approved. Several were suggested by GRRC staff.

**10. A summary of the principal comments and the agency response to them:**

No comments were received, either written or oral.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable.

**12. Incorporations by reference and their location in the rules:**

None.

**13. Was this rule previously adopted as an emergency rule?**

No.

**14. The full text of the rules follows:**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 19. STATE BOARD OF NURSING**

**ARTICLE 5. EXTENDED AND ADVANCED NURSING PRACTICE**

**Section**

**R4-19-504. Requirements for Registered Nurse Practitioner Certification**

**ARTICLE 5. EXTENDED AND ADVANCED NURSING PRACTICE**

**R4-19-504. Requirements for Registered Nurse Practitioner Certification**

**A. An applicant for certification as a registered nurse practitioner shall:**

1. Hold a current license in good standing to practice as a professional nurse in Arizona; and
2. Submit to the Board:
  - a. A notarized application furnished by the Board which provides the following information:
    - i. The applicant's full name and any former names used by the applicant;
    - ii. The applicant's current mailing address and telephone number;
    - iii. The applicant's professional nurse license number;
    - iv. A description of the applicant's educational background, including the name and location of schools attended, the number of years attended, the date of graduation, and the type of degree or

certificate awarded;

- v. The specialty area for which the applicant wishes to be certified;
  - vi. The applicant's current employer, including address, type of position, and dates of employment;
  - vii. Whether the applicant has taken and passed a national certification examination, and the name of the certifying organization, specialty area, certification number, and date of certification;
  - viii. Whether the applicant has ever had a nursing license denied, suspended, or revoked, and an explanation of any license denial, suspension, or revocation;
  - ix. Whether a disciplinary action, consent order, or settlement agreement has been imposed upon the applicant, and an explanation of any disciplinary action, consent order, or settlement agreement; and
  - x. A sworn statement by the applicant verifying the truthfulness of the information provided by the applicant.
- b. An official transcript and a copy of a certificate or official letter received from a course of study verifying completion of a registered nurse practitioner course of study in an approved registered nurse prac-

## Notices of Final Rulemaking

c. If the course of study is not an approved program or provided by a regionally accredited college or university; an official transcript, a copy of a certificate, or official letter received from a registered nurse practitioner program which shows that the program was:

- e.d. If a nurse midwife, evidence of current certification or recertification from the American College of Nurse Midwives or its Certification Council; and

- ~~d.e.~~ The prescribed fee.

- B.** An applicant for certification as a registered nurse practitioner on or after January 1, 2001, shall have a master of science degree in nursing or a masters degree in a health related area. The Board shall continue to certify a registered nurse practitioner that the Board certified before January 1, 2001, if the registered nurse practitioner maintains a current license in good standing to practice as a professional nurse in Arizona.
- C.** The Board shall issue a certificate to practice as a registered nurse practitioner in a specialty area to a professional nurse who meets the criteria set forth in this Section. An applicant who is denied a certificate may request a hearing by filing a written request with the Board within 10 days of service of the Board's order denying the application for certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 6 and 4 A.A.C. 19, Article 6.

## TITLE 6. ECONOMIC SECURITY

## SOCIAL SERVICES

**PREAMBLE**

**1. Sections Affected:**

Article 58  
Article 58  
R6-5-5801  
R6-5-5801  
R6-5-5802  
R6-5-5802  
R6-5-5803  
R6-5-5803  
R6-5-5804  
R6-5-5804  
R6-5-5805  
R6-5-5805  
R6-5-5806  
R6-5-5806  
R6-5-5807  
R6-5-5807  
R6-5-5808  
R6-5-5808  
R6-5-5809  
R6-5-5810  
R6-5-5811  
R6-5-5812  
R6-5-5813  
R6-5-5814  
R6-5-5815  
R6-5-5816  
R6-5-5817  
R6-5-5818  
R6-5-5819  
R6-5-5820  
R6-5-5821  
R6-5-5822  
R6-5-5823  
R6-5-5824  
R6-5-5825

**Rulemaking Action:**

[illegible]

**Notices of Final Rulemaking**

R6-5-5826	New Section
R6-5-5827	New Section
R6-5-5828	New Section
R6-5-5829	New Section
R6-5-5830	New Section
R6-5-5831	New Section
R6-5-5832	New Section
R6-5-5833	New Section
R6-5-5834	New Section
R6-5-5835	New Section
R6-5-5836	New Section
R6-5-5837	New Section
R6-5-5838	New Section
R6-5-5839	New Section
R6-5-5840	New Section
R6-5-5841	New Section
R6-5-5842	New Section
R6-5-5843	New Section
R6-5-5844	New Section
R6-5-5845	New Section
R6-5-5846	New Section
R6-5-5847	New Section
R6-5-5848	New Section
R6-5-5849	New Section
R6-5-5850	New Section

2. The specific authority for rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 41-1003, 41-1073, 41-1954(A)(3), 46-134(12), and 8-503

Implementing statutes: A.R.S. §§ 8-503, 8-504, 8-506, 8-509, and 46-141

3. The effective date of the rules:

February 3, 1997 (delayed effective date to assure adequate time for training and distribution of the rules)

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening:

1 A.A.R. 1157, July 21, 1995

Notice of Proposed Rulemaking:

2 A.A.R. 3334, July 12, 1996

Notice of Oral Proceedings:

2 A.A.R. 3336, July 12, 1996

5. The name and address of the agency personnel with whom persons may communicate regarding the rulemaking:

Name: Vista Thompson Brown  
Address: Department of Economic Security  
P.O. Box 6123, Site Code 837A  
Phoenix, Arizona 85005  
Telephone: (602) 542-6555  
Fax: (602) 542-6000

6. An explanation of the rule, including the agency's reasons for initiating the rule:

Since at least 1939, Arizona has licensed family foster homes. The current rules were adopted in May 1981 to update prior requirements for the licensing of safe homes and qualified substitute parents to care for children who are at risk of being or who have been abused, neglected, or exploited. In this rulemaking package, the Department is adopting a new, comprehensive set of rules to govern licensing requirements for family foster parents. These new requirements reflect updated safety and sanitation guidelines for the foster home and updated qualifications for the foster parents who are required to care for an increasingly difficult population of children. The new rules will be consistent with current federal and state authority and with current program policy and practice. The new rules contain a comprehensive set of definitions and also describe the administrative process for licensure.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state.

Not applicable.

8. The summary of the economic, small business, and consumer impact:

There will be minimal economic impact on small businesses as the rules do not significantly change the requirements for private

**Notices of Final Rulemaking**

agencies which recruit, train, and monitor foster parents. The impact on foster parent applicants and licensees will be minimal as the underlying substantive requirements are unchanged from current policy and practice. The rules themselves have been updated to include new language and to reflect practice standards that have occurred during the past 15 years.

**9. A description of the changes between the proposed rules, including supplemental notices, and final rules:**

**- Technical Changes (Format, Style, Grammar, Consistency):**

Based on public comments, the Department's review of the rules, and the review performed by staff to the Governor's Regulatory Review Council, the Department made non-substantive corrections and changes to punctuation and grammar, to conform language to the Secretary of State's requirements, and to insert text that was inadvertently omitted. The Department also fixed erroneous cross-references, statutory citations, and mislabeled subsections.

**R6-5-5801** Rearranged defined terms that were out of alphabetical order.

**R6-5-5801(De-escalation)** Added "s" to calm; "calms the child."

**R6-5-5801(Neglect)** Corrected the statutory reference: A.R.S. § 8-546(A)(6)(7).

**R6-5-5801(Special care child)** Inserted omitted text "1 or more of:" "...not achieved expected norms for the child's developmental stage in 1 or more of the following..."

**R6-5-5802(B)(8)** Deleted apostrophe from "employers."

**R6-5-5802(B)(15)** Deleted "s" on applicants; "...related to the applicant by..."

**R6-5-5802(C)(1) and (C)(2)** Deleted "s" on members; "each adult household member..."

**R6-5-5802(C)(1)(n)** Inserted "adult"; "...vulnerable adult."

**R6-5-5802(D)** Deleted "form"; the rule applies to a complete application package.

**R6-5-5807(B)(2)** Fixed cross reference by inserting "(1)"; "Subsection (B)(1)." "

**R6-5-5808(C)** Added omitted word "unless;" "different dwelling unless the licensing agency." Also corrected a cross-reference by deleting "(C)"; "...as prescribed in R6-5-5814(C)..."

**R6-5-5814(G)(3):** Revised text to eliminate confusion resulting from the ending phrase, "as appropriate..." "*The foster parent shall comply with R6-5-5814(C) and (E) above, as appropriate to the circumstances R6-5-5814(F) and also with subsection (C) if the foster parent moves.*"

**R6-5-5819(F):** Eliminated "this;" "...pursuant to this subsection (D)."

**R6-5-5839(E):** Changed "shall" to "does;" "*temperature that shall does not exceed...*"

**R6-5-5839(H)** Deleted "are;" "...foster family or are routinely..."

**R6-5-5841(A)** Added standard language for an incorporation by reference: "...and not including any later amendments or editions..."

**R6-5-5846(D)(2)** Added text to clarify that each floor needs an exit that will allow a child to safely reach ground level. Did not specify additional detail about the method permitting access to ground level to allow for innovation and flexibility. "*...travel to the outdoors, and a safe method to reach at street or ground level.*"

**R6-5-5849(C)(8)** Added omitted words: "*Play Equipment.*"

Substantive Changes (Changes that resulted in a change or clarification in the meaning of a rule):

Based on comments from licensing agencies, foster parents, and staff to the Governor's Regulatory Review Council, as well as the Department's review of the rules, the Department made the following substantive corrections and changes to rules.

**R6-5-5801.Definitions**

As described below, added 3 definitions in response to comments expressing concern about the need to define "de-escalation" and "physical restraint" to clarify training requirements in R6-5-5850(C)(3), and recommending that certain types of restraints be prohibited. The added definitions are consistent with definitions in another set of rules that are under development. Renumbered all definitions (beginning with #12) to conform.

**R6-5-5801.**Added the definition of "de-escalation" to clarify the type of required training in behavior management methods for professional foster parents.

*"De-escalation" means a method of verbal communication or non-verbal signals and actions, or a combination of signals and actions, that interrupts a child's behavior crisis and calms the child.*

**R6-5-5801.**Added the following definition of "mechanical restraint" to explain the meaning of a behavior management method that was added to the behavior management rule (R6-5-5833) as a prohibited method.

*"Mechanical restraint" means:*

**Arizona Administrative Register**  
**Notices of Final Rulemaking**

*a. An article, device, or garment that:*

- i. Restricts a child's freedom of movement or a portion of a child's body;*
- ii. Cannot be removed by the child; and*
- iii. Is used for the purpose of limiting the child's mobility.*

*b. But does not include an orthopedic, surgical, or medical device which allows a child to heal from a medical condition or to participate in a treatment program.*

**R6-5-5801.** Added the following definition of "physical restraint" to explain the meaning of a restricted behavior management method identified in the behavior management rule (R6-5-5833).

*"Physical restraint" means the use of bodily force to restrict a child's freedom of movement, but does not include the firm but gentle holding of a child with no more force than necessary to protect the child or others from harm.*

**R6-5-5801.** Deleted the definition of "punishment" as unnecessary. The behavior management rule (R6-5-5833) in which the term "punishment" is used, lists the type of behavior which is prohibited and adequately identifies what is meant by "punishment." Renumbered remaining definitions to conform.

**R6-5-5801.** In response to a concern that no foster parent can guarantee that a foster child will not be harmed regardless of what safety measures a foster parent has put in place, revised the definition of "safeguard" to clarify that "reasonable measures" modifies "ensure" as well as "eliminate." *"Safeguard means to take reasonable measures...to ensure that a foster child is not harmed..."*

**R6-5-5802. Application for Initial License**

Added the following rule to specify the timeframe for an applicant to submit missing information following a notice of administrative deficiencies.

*E. If the applicant does not supply the missing information, as prescribed in the notice, within 60 days of the notice date, the Department may close the file. An applicant whose file has been closed, who later wishes to become licensed, may reapply.*

**R6-5-5803(E). Investigation of the Applicant**

Fixed erroneous cross-references to sections exempting in-home respite parents from certain requirements:

- 4. ...as required by this Section and R6-5-5802(B)(7), R6-5-5823(4);*
- 5. ...as required by R6-5-5805 and R6-5-5806.*

**R6-5-5804. Inspection of the Foster Home; DHS Inspection Report**

In response to a comment expressing concern that the role of the DHS was unclear, reorganized the rule by moving language to different subsections, (without substantive change,) to clarify the process and the role of the Department of Health Services (DHS) inspector and to fix mislettered subsections. Old subsections (C)(1) and (2), (D) and (E) were merged in the revised subsection (B).

*B. The applicant shall cooperate with the DHS representative by making the home available for inspection and allowing the DHS representative unrestricted access to the entire foster home and the surrounding premises to perform the following checks on the systems, equipment, and conditions:*

- 1. Check the home's heating, cooling, ventilation, and lighting systems, and major appliances;*
- 2. Look at furniture, fixtures, and equipment for evidence of loose hardware, rusting parts, and other damage;*
- 3. Check walls, ceilings, and floors for evidence of flaking paint or plaster, loose tiles, boards, and panels, and exposed or unsafe wiring that may pose a danger or health risk to a child;*
- 4. Check the home and surrounding premises for evidence of dirt, animal waste, and vermin;*
- 5. Check whether the sewage disposal system functions and is in good repair;*
- 6. Check the system, method, and timing for refuse and waste storage and removal;*
- 7. Check whether dangerous objects, materials or conditions, have been locked, safeguarded, or removed as prescribed in this Article;*
- 8. Determine whether the home has the equipment and space prescribed in R6-5-5838 through R6-5-5846.*

*F.C. The DHS representative shall prepare a written report of the inspection and send a copy to the licensing agency*

*G.D. To determine if a foster home and its surrounding premises are safe, sanitary and in good repair, the DHS inspector and the licensing agency or Licensing Authority shall evaluate the DHS written report to determine whether the home has any natural or man-made conditions that pose a risk of harm to a foster child, and whether a foster parent has taken or can take reasonable measures to eliminate that risk of harm and ensure that a foster child will not be harmed by a particular object, sub-*

stance, or activity.

~~C.1.Locking, safeguarding, or removing dangerous objects, materials or conditions, as prescribed in this Article; and~~

~~C.2.Having the equipment and space prescribed in R6-5-5838 through R6-5-5846;~~

~~D.To determine if a home is in good repair, the DHS inspector and the licensing agency shall:~~

- ~~1. Check the home's heating, cooling, ventilation and lighting systems, and major appliances;~~
- ~~2. Look at furniture, fixtures, and equipment for evidence of loose hardware, rusting parts, and other damage; and~~
- ~~3. Check walls, ceilings, and floors for evidence of flaking paint or plaster, loose tiles, boards, and panels, and exposed or unsafe wiring that may pose a danger or health risk to a child.~~

~~E. To determine if a home is sanitary, the DHS inspector and licensing agency shall:~~

- ~~1. Check the home and surrounding premises for evidence of dirt, animal waste, and vermin;~~
- ~~2. Check whether the sewage disposal system functions and is in good repair; and~~
- ~~3. Check the system, method, and timing for refuse and waste storage and removal.~~

~~F. The DHS representative shall prepare a written report of the inspection and send a copy to the licensing agency.~~

**R6-5-5806.Complete Application Package: Contents**

Replaced (D) with new language that permits the Licensing Authority determine whether the application package is complete by performing the administrative completeness review on the information provided and gives a timeframe for the applicant to supply the missing information.

D. If the applicant does not supply the missing information, as prescribed in the notice, within 60 days of the notice date, the licensing agency may close the file. An applicant whose file has been closed, who later wishes to become licensed, may reapply.

**R6-5-5814.Amended License; Change in Household Members**

Revised text to improve conciseness. Added text to clarify that a foster parent may request an amended license or the licensing agency may initiate a change in a license. Also, switched order of subsections (A) and (B) to better reflect the process.

A.B. The following changes require a license amendment to the license:

B.A. The foster parent may request a license amendment or the licensing agency may initiate the amendment in response to an observed change. The Licensing Authority...

In response to comments that the ability to add new household members and the prohibition in R6-5-5823(6)(c) of an adult roomer or boarder is inconsistent, revised subsection (E) to clarify the process and to substitute prior approval requirement for a prior notice requirement. The fingerprinting and certification form will still be submitted after the new member's arrival. The prior approval requirement will permit the licensing agency to assess the risks posed by a new household member without unduly restricting the freedom of the foster parent.

1. Obtain prior approval from the licensing agency;
1. Notify the licensing agency within 5 work days of the new member's arrival;
2. Ensure that a new adult household member submits a criminal history certification and submits to fingerprinting as prescribed in R6-5-5802(C), within 10 work days of the member's arrival;

In subsection (F), added criteria for the approval of the addition of a new household member to address a concern about how the Department exercises discretion and relettered all remaining subsections.

E. In determining whether to approve the addition of the new household member, the licensing agency shall consider:

1. The relationship of the new household member to the foster parent;
2. The length of time the foster parent has known the new household member;
3. The background of the new household member including any criminal history;
4. The financial arrangements, if any, between the foster parent and the new household member;
5. What, if any, child care responsibilities the new household member may have;
6. Whether the new household member has any physical or emotional conditions that present a risk to foster children and current household members; and
7. Whether the home will still meet the equipment and space requirements prescribed in R6-5-5838 through R6-5-5846 with the addition of the new household member.

Notices of Final Rulemaking

**R6-5-5816. Investigation of Complaints About a Foster Home**

In response to a comment expressing concern that a complaint and an allegation of abuse could be confused, added language to clarify which complaints are investigated and the time frame for reporting complaints.

*(A)(2) Report all complaints to the Licensing Authority within 5 days and investigate all other complaints, not reported to CPS, as prescribed in this Section.*

Added subsection (C) to establish a time frame for completing the investigation of the complaint. Revised subsection (D) to add "written summary" to the report of the results.

*C. The licensing agency shall complete the investigation within 60 days. If the investigation can not be completed within 60 days, the licensing agency shall notify the Licensing Authority and provide a date for completion of the investigation.*

*(C)D. When the investigation is completed, the licensing agency shall ~~notify~~ send the Licensing Authority a written summary of the results.*

**R6-5-5823. Foster Parent: General Qualifications**

Deleted subsection (6)(c) to eliminate potential inconsistency with R6-5-5814(F), which added criteria for the licensing authority to consider when deciding whether a new household member can be added to the foster family.

6.c. Accept non-relative adult roomers or boarders.

**R6-5-5829. Daily Care and Treatment of a Foster Child; Foster Child Rights**

In response to a comment expressing concern that only public school attendance is permitted, modified language in subsection (E) to permit home schooling and other alternative educational arrangements.

- 1. A foster parent shall send a foster child to public school unless alternative educational arrangements, such as private, charter, or home schooling, have been approved in the child's case plan.*
- 2. A foster parent shall help the child in obtaining other educational services as prescribed in the child's case plan.*

*A foster parent shall send a foster child to school and assist the child in obtaining other educational services as prescribed in the child's case plan.*

**R6-5-5833. Behavior Management; Discipline; Prohibitions**

Revised subsection (C)(8) to eliminate "unreasonable" which was vague, and to substitute "developmentally appropriate," which is a defined term.

Added subsections (D) and (E) to include a prohibited behavior management method and to include qualifications for the use of a second behavior management method.

- 8. Requiring a foster child to remain silent or be isolated for unreasonable time periods of time that are not developmentally appropriate.*
- D. A foster parent shall not use mechanical restraints.*
- E. A foster parent shall not use physical restraint unless:*
  - 1. Permission to use physical restraint is specified in the child's case plan; and*
  - 2. The foster parent has been trained in the proper use of the physical restraint to be used with a particular child.*

**R6-5-5834. Notification of Foster Child Death, Illness, Accident, Unauthorized Absence or Other Unusual Events**

In response to a comment received on subsections (A) and (B) that the foster parent should notify the licensing agency instead of the placing agency and insert language that the licensing agency must notify the placing agency. The comment further suggested that subsection (C) be modified to require that the written notice be provided by the licensing agency. The Department revised subsection (C) replacing "Licensing Authority" with "licensing agency" and added subsection (D).

*D. Within 2 days of receipt of the written report prescribed in subsection (C), the licensing agency shall send the written report to the Licensing Authority.*

**R6-5-5841. Swimming Pools and Safety**

Added the word "physically" in subsection (B) to strengthen and clarify the degree of inaccessibility required. New language is "otherwise made physically inaccessible".

**R6-5-5843. Bathrooms**

In response to a comment about the need for slip-resistant flooring in bathrooms, reformatted text and added the following requirement:

- B. A foster parent shall:*



**Notices of Final Rulemaking**

1. *Maintain the foster home's toilets, washbasins, bathtubs, and showers in good working order; and*
2. *Have slip resistant flooring for bathtubs and showers.*

**R6-5-5850. Special Provisions for a Professional Foster Home**

Modified subsection (C)(3)(a) and divided into 2 subparagraph for improved clarity.

- a. *Training in de-escalation;*
- b. *Training in physical restraint practices as needed; and*
- a. *Training in de-escalation and physical restraint practices; and*

Reformatted subsection (D)(3) and changed subsection (D)(3)(a) to make reference to checking CPS reports into a new, separate subsection.

3. *In deciding whether to recommend increased capacity as allowed by subsection (D)(2), the licensing agency shall assess:—*
  - a. *The ~~the~~ professional foster parent's motivation for fostering more than 2 special care children;*
  - b. *Any CPS reports involving the professional foster parent; and*
  - c. *Whether ~~whether~~ the professional foster parent has demonstrated:*
    - i. *Verified, successful professional foster parenting experience with 2 special care children including a review of any CPS reports;*

In subsection (E), replaced the term "respite care provider" with "approved alternative care provider" to broaden the population of acceptable care providers. Added the phrase "serve as the foster child's primary care provider" to clarify that direct care of the child by the professional foster parent at all times is not required.

- E. *Except when temporarily replaced by an approved alternative ~~a respite~~ care provider, a professional foster parent shall ~~serve as the foster child's primary caregiver and be available at all times to provide direct physical and specialized professional services as required in the foster child's case plan.~~*

**10. A summary of the principal comments and the agency responses to them:**

The Department received public comments regarding the issues summarized below.

Foster parents and licensing agencies have generally been supportive of the new rules. This Section describes comments that were not adopted, and the Department's response to those comments. The response explains the Department's reasons for not making a requested change. In question 9 above, the Department described comments received where the response was to make the requested change.

**R6-5-5801(Foster care requirements)** A comment was received to insert the word "minimal" in front of the word "standards" in the definition of "foster care requirements". The Department determined that the insertion of the word "minimal" would be redundant and confusing.

**R6-5-5801(Professional foster care)** One request was made to revise the definition of "professional foster care" to strengthen the requirement and by mirroring the definition of "treatment foster care" used by the National Association of Foster Family-Based Treatment Association. The Department decided to retain the current language because "professional foster care" and "treatment foster care" are not synonymous terms. The Department determined that the service defined as "professional foster care" is fully described as defined.

**R6-5-5801(Swimming Pool):** On person suggested that the current definition of "swimming pool", with a depth of water at eighteen (18) inches be kept instead of the revised 12 inches. The Department determined the change in depth requirement would be kept because the change was made to be consistent with other Department rules and because of safety concerns about the risk to children.

**R6-5-5802(B)(5)(a) and (b): Application for Initial License** One comment was received that requiring the foster parent's physician to list regularly prescribed medications and the purpose of the medication would increase the difficulty of the getting a medical statement. The Department determined that this information was essential to the investigation of the applicants and is consistent with the child developmental foster home licensing rules of the Division of Developmental Disabilities.

**R6-5-5802(B)(6): Application for Initial License** One person asked whether the Department was no longer requiring a particular form for children's medical and immunization history. The Department is not requiring licensing agencies to use a particular form, as a matter of rule, so long as the required information is made available.

**R6-5-5802(B)(15): Application for Initial License** Received 1 comment to add a specific time requirement that a reference must know an applicant before being qualified as a reference. The Department determined that the amount of information the reference can provide is more important than the length of the relationship. The Department also feels that it is significant if an applicant chooses to provide or is unable to provide references of long duration.

**R6-5-5803: Investigation of the Applicant** The Department received a request to change the word "investigate" to "assess" throughout the rules. The Department determined that the word "investigate" more accurately describes the process that is required

**Notices of Final Rulemaking**

by these rules.

Another comment suggested that licensing agencies should interview applicants at least 3 times during the application process rather than 2 times. The Department determined that requiring more than 2 interviews would impose a burden on some agencies and applicants, particularly where the applicant is located far away from the agency. Merely requiring another separate interview would not assure the quality of the interview. The Department tried to assure that the interviews would be thorough by specifying a minimum number of hours that the licensing agency must spend on the interviews rather than specifying a certain number of visits. A licensing agency may always choose to spend additional time interviewing an applicant or to increase the number of interviews above the minimum specified in rule.

R6-5-5803(B)(10) permits a licensing agency to request "insurance information." One person suggested that the rules should specify the type of insurance information, such as liability or fire. The Department left the term broad because the goal of the rule is to permit a licensing agency to request any type of insurance information the agency deems pertinent to the investigation of the applicant.

**R6-5-5810. Application for License Renewal.** One person suggested that the rule should require the licensing agency to send a license renewal application to a foster parent at least 90 days before expiration of the current license, rather than the 60 days set forth in the proposed rule. The Department chose 60 days based on concern that 90 days would be too long and would cause an applicant to put the application aside thinking that he or she has plenty of time to renew. A licensing agency may, if it chooses, send the application out 90 days in advance. The 60 days is only a minimum requirement.

**R6-5-5811. Renewal Investigation; Licensing Report and Recommendation**

One comment requested that subsection (C) specify whether fingerprinting is required. The Department determined that the currently published forms and exhibits used by licensing agencies to request annual statewide criminal history records information checks specifically do not require fingerprinting. Actual fingerprints may be needed pursuant to R6-5-5810(E) if the Department of Public Safety is unable to provide criminal history records information without fingerprints.

**R6-5-5825. Training and Development.** The Department received comment that foster parents do not need to be trained on the Indian Child Welfare Act (ICWA) and to add cultural competency as a subject. The Department determined that foster parents must be made aware of ICWA to meet federal law and policy requirements. The Department determined that cultural competency training is already included in the list of subjects in subsection (A)(4).

**R6-5-5832. Transportation:** One comment asked whether a valid non-Arizona driver's license would be acceptable. The Department determined that no change was necessary to maintain the safety provision of this subsection.

**R6-5-5839. Foster Home: General Safety Measures.** One comment stated that subsection (G) is vague regarding the types of animals that may be a danger to a foster child. The Department determined that the history of the animal and where it is kept must be considered to determine the risk of any animal because any animal could be a danger to a foster child.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific agency or to any specific rule or class of rules.  
Not applicable.
12. Incorporations by reference and their locations in the rules:  
R6-5-5841
13. Was this rule previously adopted as an emergency rule?  
No.
14. The full text of the rules follows:

**TITLE 6. ECONOMIC SECURITY**

**CHAPTER 5. DEPARTMENT OF ECONOMIC SECURITY**

**SOCIAL SERVICES**

**ARTICLE 58. FAMILY FOSTER HOME LICENSING-  
STANDARDS**

**ARTICLE 58. FAMILY FOSTER PARENT LICENSING-  
REQUIREMENTS**

R6-5-5801. Definitions  
R6-5-5801. Definitions  
R6-5-5802. Requirements of initial licensing  
R6-5-5802. Application for Initial License  
R6-5-5803. Requirements for re-licensing  
R6-5-5803. Investigation of the Applicant  
R6-5-5804. Standards of child care  
R6-5-5804. Inspection of the Foster Home; DHS Inspection

Report  
R6-5-5805. Responsibilities to Department or placing agency  
R6-5-5805. Investigative Report and Licensing Recommendation  
R6-5-5806. Denial, suspension, or revocation of license  
R6-5-5806. Complete Application Package: Contents  
R6-5-5807. Waiver of licensing standards  
R6-5-5807. CPSCR Check; Additional Investigation By Licensing Authority  
R6-5-5808. License: Form; Issuance; Denial; Term; Termination  
R6-5-5809. Provisional License  
R6-5-5810. Application for License Renewal

**Notices of Final Rulemaking**

- R6-5-5811. Renewal Investigation; Licensing Report and Recommendation
- R6-5-5812. Renewal License
- R6-5-5813. Licensing Time Frames
- R6-5-5814. Amended License; Change in Household Members
- R6-5-5815. Monitoring the Foster Home and Family
- R6-5-5816. Investigation of Complaints about a Foster Home
- R6-5-5817. Licensing Authority Action on Complaints
- R6-5-5818. Corrective Action
- R6-5-5819. License Denial, Suspension, and Revocation
- R6-5-5820. Adverse Action; Notice; Effective Date
- R6-5-5821. Appeals
- R6-5-5822. Alternative Methods of Compliance
- R6-5-5823. Foster Parent: General Qualifications
- R6-5-5824. Foster Parent: Personal Characteristics
- R6-5-5825. Training and Development
- R6-5-5826. Compliance with Licensing Limitations; Adult-child Ratios
- R6-5-5827. Placement Agreement
- R6-5-5828. Participation in Case Planning
- R6-5-5829. Daily Care and Treatment of a Foster Child; Foster Child Rights
- R6-5-5830. Medical and Dental Care
- R6-5-5831. Child Care
- R6-5-5832. Transportation
- R6-5-5833. Behavior Management; Discipline; Prohibitions
- R6-5-5834. Notification of Foster Child Death, Illness, Accident, Unauthorized Absence, or Other Unusual Events
- R6-5-5835. Notification of Events or Changes Involving the Foster Family or the Foster Home
- R6-5-5836. Maintenance of a Foster Child's Records
- R6-5-5837. Confidentiality
- R6-5-5838. Foster Home: General Requirements
- R6-5-5839. Foster Home: General Safety Measures
- R6-5-5840. Exterior Environment; Play Area; Play Equipment
- R6-5-5841. Swimming Pools and Pool Safety
- R6-5-5842. Bedrooms; Bedding; Sleeping Arrangements
- R6-5-5843. Bathrooms
- R6-5-5844. Kitchen
- R6-5-5845. Fire Safety and Prevention
- R6-5-5846. Emergencies, Exits, and Evacuation
- R6-5-5847. Special Provisions for a Receiving Foster Home
- R6-5-5848. Special Provisions for a Respite Foster Home
- R6-5-5849. Special Provisions for an In-home Respite Foster Parent
- R6-5-5850. Special Provisions for a Professional Foster Home

**ARTICLE 58. FAMILY FOSTER HOME LICENSING-  
STANDARDS**

**ARTICLE 58. FAMILY FOSTER PARENT LICENSING-  
REQUIREMENTS**

**R6-5-5801. Definitions**

- A. "Foster care". Substitute care for a child whose own family cannot provide care for a temporary or extended period of time. Foster care may be in a private family home, group foster home, or an institution.
- B. "Licensed medical practitioner". Any doctor of medicine or osteopathic physician lawfully engaged in the practice of medicine pursuant to Chapters 13 and 17, Title 32, A.R.S.
- C. "Respite care". The provision of care of an individual for the purpose of relieving the family, guardian, or foster family of the individual's care for short, specified periods of time.

**R6-5-5801. Definitions**

In addition to the definitions contained in A.R.S. §§ 8-201, 8-501,

and 8-531, the following definitions apply in this Article:

1. "Abandonment" has the same meaning ascribed to "abandoned" in A.R.S. § 8-546(A)(1).
2. "Abuse" means the infliction or allowing physical injury, impairment of bodily function or disfigurement, or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist pursuant to section 8-223 and which is caused by the acts or omissions of an individual having care, [physical] custody and control of a child. Abuse shall include inflicting or allowing sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553, incest pursuant to section 13-3608 or child prostitution pursuant to section 13-3212. A.R.S. § 8-546(A)(2).
3. "Adult" means a person age 18 years or older.
4. "Applicant" means a person who submits a written application to the Licensing Authority or a licensing agency to become licensed, or to renew a license as a foster parent. An applicant means both spouses if the adult household caregivers are married, except for a person seeking licensure solely as an in-home respite foster parent.
5. "Case plan" means a written document which is a distinct part of a child's case record, and which identifies the child's permanency goal and target date, desired outcomes, tasks, time frames, and responsible parties.
6. "Child placing agency" or "placing agency" means:
  - a. The Department, a county probation Department, or the Administrative Office of the Arizona Supreme Court, which are all statutorily authorized to place children into out-of-home care; and
  - b. Any other person or entity authorized to receive children for care, maintenance, or placement in a foster home because the Department has licensed the person or entity as a child welfare agency pursuant to A.R.S. § 8-505.
7. "Corrective action" means a plan that describes steps a foster parent must take to remedy violations of foster care requirements within a specified period of time.
8. "CPS" means Child Protective Services, a Department program responsible for investigating reports of child maltreatment.
9. "CPSCR" means the Child Protective Services Central Registry, a computerized database, which CPS maintains pursuant to A.R.S. § 8-546.03.
10. "Department" or "DES" means the Department of Economic Security.
11. "Developmentally appropriate" means an action which takes into account:
  - a. A child's age and family background;
  - b. The predictable changes that occur in a child's physical, emotional, social, cultural, and cognitive development; and
  - c. A child's individual pattern and timing of growth,

*Arizona Administrative Register*  
**Notices of Final Rulemaking**

- personality, and learning style.
12. "De-escalation" means a method of verbal communication or non-verbal signals and actions, or a combination of signals and actions, that interrupts a child's behavior crisis and calms the child.
13. "DHS" means the Department of Health Services.
14. "Discipline" means a teaching process through which a child learns to develop and maintain the self-control, self-reliance, self-esteem, and orderly conduct necessary to assume responsibilities, make daily living decisions, and live according to generally accepted levels of social behavior.
15. "Exploitation" means the act of taking advantage of, or making use of a child selfishly, unethically, or unjustly for one's own advantage or profit, in a manner contrary to the best interests of the child, such as having a child pan-handle, steal, or perform other illegal activities.
16. "Foster care requirements" mean the standards for lawful operation of a foster home as prescribed in A.R.S. § 8-501 *et seq.* and 6 A.A.C. 5, Article 58.
17. "Household" means a group of people who regularly occupy a single residence.
18. "Household member" means a person who resides in an applicant's or foster parent's household for 21 consecutive days or longer, or who resides in the household periodically throughout the year for more than a total of 21 days.
19. "In-home respite foster parent" means an individual licensed to provide respite care in a licensed family foster home that is not that individual's own home.
20. "License" means a document issued by the Licensing Authority to a foster parent which authorizes the foster parent to operate a foster home in compliance with foster care requirements.
21. "Licensed medical practitioner" means a person who holds a current license or certification as a physician, surgeon, nurse practitioner or physician's assistant pursuant to A.R.S. §§ 32-1401 *et seq.*, Medicine and Surgery; §§ 32-1800 *et seq.*, Osteopathic Physicians and Surgeons; §§ 32-2501 *et seq.*, Physician's Assistant; and A.R.S. §§ 32-1601 *et seq.*, Nursing and A.A.C. R4-19-503, Registered Nurse Practitioner.
22. "Licensing agency" means a person who or an entity which performs an investigative family study of an applicant for an initial or renewal foster home license, as prescribed in R6-5-5803 and R6-5-5812, and which monitors the foster home, as prescribed in R6-5-5815. "Licensing agency" includes the Department and may include county probation departments.
23. "Licensing Authority" means a DES administrative unit which makes foster home licensing determinations, including issuance, denial, suspension, revocation, and imposition of corrective action.
24. "Maltreatment" means abuse, neglect, exploitation, or abandonment of a child.
25. "Mechanical restraint" means:
- a. An article, device, or garment that:
    - i. Restricts a child's freedom of movement or a portion of a child's body;
    - ii. Cannot be removed by the child; and
    - iii. Is used for the purpose of limiting the child's mobility;
  - b. But does not include an orthopedic, surgical, or medical device which allows a child to heal from a medical condition or to participate in a treatment program.
26. "Neglect" has the same meaning ascribed to it in A.R.S. § 8-546(A)(7).
27. "Parent or parents" means the natural or adoptive parents of the child. A.R.S. § 8-501(A)(8).
28. "Physical restraint" means the use of bodily force to restrict a child's freedom of movement, but does not include the firm but gentle holding of a child with no more force than necessary to protect the child or others from harm.
29. "Professional foster care" means a foster family based model of care provided by an individual who has received specialized training to provide care and services within a support system of clinical and consultative services to special care children.
30. "Professional foster home" means the licensed foster home of an individual or couple authorized to provide professional foster care.
31. "Receiving foster home" means a licensed foster home suitable for immediate placement of children when taken into custody or pending medical examination and court disposition. A.R.S. § 8-501(A)(9).
32. "Respite care" means the provision of short term care and supervision of a foster child to temporarily relieve a foster parent from the duty to care for the child.
33. "Respite foster parent" means a licensed foster parent authorized to provide respite care.
34. "Safeguard" means to take reasonable measures to eliminate the risk of harm to a foster child and to ensure that a foster child will not be harmed by a particular object, substance, or activity. Where a specific method is not otherwise prescribed in this Article, safeguarding may include:
- a. Locking up a particular substance or item;
  - b. Putting a substance or item out of the reach of a child who is not mobile; or
  - c. Erecting a barrier which prevents a child from reaching a particular place, item or substance;
  - d. Mandating the use of protective safety devices; or
  - e. Providing supervision.
35. "Service team" means the group of persons listed in R6-5-5828(A) who participate in the development and review of a child's case plan.
36. "Significant person" means a person who is important or influential in a child's life and may include a family member or close friend.
37. "Sleeping area" means a single bedroom or a cluster of 2 or more bedrooms located in an adjacent area of a dwelling.
38. "Special care child" means a foster child who has not achieved expected norms for the child's developmental stage in 1 or more of the following areas: physical, medical, mental, psychological, intellectual, emotional, and social. This includes a child who experiences difficulty in establishing or maintaining developmentally appropriate interpersonal relationships.
39. "Swimming pool" means any natural or man-made body

**Notices of Final Rulemaking**

of water used for swimming, recreational, or decorative purposes, which is greater than 12 inches in depth, and includes spas and hot tubs.

40. "Work day" means Monday through Friday between 8 a.m. and 5 p.m., excluding Arizona state holidays.

**R6-5-5802. Requirements of initial licensing**

**A. Application**

1. Married or single persons desiring to provide foster care shall make written application to the Department on the prescribed form.
2. Applicants shall participate in interviews and home study, as required by the Department.
3. Applicants shall comply with this Article.
4. Applicants shall cooperate with the Department in obtaining information necessary to determine if the home meets licensing standards. Such cooperation includes, but is not limited to, executing a release of information, and obtaining psychological, psychiatric or other evaluations.

**B. Requirements of applicants and household members**

1. Applicants shall be over the age of 21 years.
2. Applicants and members of household 18 years or older shall be fingerprinted, unless physically impossible, for a criminal record check.
3. Applicants shall have income, independent of foster care payments, adequate to meet needs of the family unit.
4. Both parents shall not be employed outside the home unless the hours of work do not conflict with the appropriate care and supervision of the children by a responsible adult. Any plan for the supervision of the children in the working foster parents absence must meet the approval of an authorized representative of the agency supervising the foster home.
5. The applicants shall be in good physical and mental health.
  - a. Applicants shall submit a statement from a licensed medical practitioner stating that each adult living in the home who will assume any child care responsibilities was seen by the practitioner within the last 6 months. The statement will include the following:
    - i. A description, to the best of the practitioner's knowledge, of their general physical and emotional health, and
    - ii. Any medical or emotional problems that would prevent them from properly caring for foster children.
  - b. Applicants shall submit documentation that each child living in the home has received the immunizations appropriate to his or her age and state of health.
  - c. As an alternative to the documentation described in subparagraph (b) above, applicants may submit a signed statement that their child(ren) has not been immunized because of affiliation with a religion which is opposed to such immunizations.
6. Applicants shall provide the Department with 3 references, not related to the applicant, as to their character and ability to care for children. The Department may contact these references for further information.
7. Applicants shall attend initial training as required by A.R.S. §§ 8-503(6) and 8-509 plus any additional training as required by the Department.

8. The decision to be licensed as a foster home shall be agreeable to all family members.
9. Applicants shall demonstrate an understanding of and the ability to handle the emotional, physical, developmental, educational, and intellectual needs of children.
10. Applicants shall demonstrate the ability to provide nurturance, warmth, intellectual stimulation, and be able to protect children from harm.
11. Applicants shall have a wholesome attitude toward, and understanding of, habit training, discipline, health, nutrition, sex education, and the various experiences that a child may have and with which a child may need assistance and guidance.
12. Additional personal qualifications
  - a. Special foster home parents shall:
    - i. Have the necessary patience, understanding and acceptance to supervise and motivate children who are physically handicapped, developmentally disabled, emotionally disturbed or delinquent.
    - ii. Have previous training or experience or demonstrate a willingness to care for children with special needs.
    - iii. Have the ability to work effectively with the worker and other specialists involved in the planning and treatment of the child.
    - iv. Participate in specialized learning experiences when available.
    - v. Have a physical setting appropriate to the special needs of the child(ren).
  - b. Receiving foster home parents shall:
    - i. Have a household that is exceptionally flexible and capable of accepting children of varied cultural and racial backgrounds.
    - ii. Help children in all states of emotional stress at all hours of the day and night.
    - iii. Participate in specialized training when available.

**C. Requirements of the home**

1. The foster home shall be maintained in a safe and sanitary condition.
2. The foster home shall be inspected and meet the requirements of the Department of Health Services and the Department of Economic Security. Fire safety inspections shall be made in all mobile homes and when necessary in order to verify conformity to fire codes.
3. The foster home shall comply with local building, health, fire or other codes in effect in the jurisdiction where it is located.
4. Swimming pools shall meet the requirements of the Health Department. All homes licensed for children under age 6 must have swimming pools separately fenced and made inaccessible. All children who are unable to swim shall not be in pool area unless supervised. Foster parents shall establish safety rules for use of the pool appropriate to age and ability of the children.
5. Medicines, toxic and corrosive materials shall be kept in locked storage.
6. Firearms shall be locked up at all times and ammunition shall be kept in separate locked storage.

**Notices of Final Rulemaking**

7. ~~Bedrooms shall have light, ventilation and a usable exit to the outside in case of emergency.~~
8. ~~Each child shall have his own bed and a place to store clothing and personal belongings.~~
9. ~~Each home licensed for children under 2 years of age shall have a crib available for use by such children or, in the alternative, shall have available other safe sleeping facilities for use by such children which have been approved by the licensing worker.~~
10. ~~Telephone service or similar communication methods shall be available in the home.~~
11. ~~Foster parents shall have liability insurance on their vehicles transporting foster children.~~

**R6-5-5802. Application for Initial License**

- A. A person who wishes to become licensed as a foster parent shall apply to a licensing agency on a form specified by the licensing agency.
- B. An applicant shall provide the licensing agency with at least the following information on each applicant:
  1. Personally identifying information, including:
    - a. Name,
    - b. Date of birth,
    - c. Social Security number,
    - d. Ethnicity,
    - e. Telephone number,
    - f. Current address,
    - g. Length of Arizona residency, and
    - h. Current marital status and marital history;
  2. Personally identifying information on the applicant's household members, including:
    - a. Name,
    - b. Date of birth,
    - c. Social Security number, and
    - d. Relationship to applicant;
  3. Personally identifying information on the applicant's children who do not live with the applicant, including emancipated children, as follows:
    - a. Name,
    - b. Current address,
    - c. Telephone number, and
    - d. Date of birth;
  4. The applicant's monthly or yearly household budget, showing assets, obligations, debts, and income;
  5. Medical statements for the applicant and any adult household member who will regularly care for foster children, showing that the applicant and household member meet the requirements prescribed in R6-5-5823(4); the statement shall:
    - a. Include a description of the person's general health, and identify any medical problem or physical condition that will prevent or limit the person from caring for a foster child, or that may negatively impact a foster child;
    - b. Include a list of all regularly prescribed medications and the purpose of each medication; and
    - c. Be signed and dated by a licensed medical practitioner who shall have examined the person within 6 months prior to the date of application for licensure;
  6. Immunization records for each child household member;
  7. A current statement and history of physical and mental

- health and treatment on the applicant and the applicant's household members, to the extent that such information has not already been provided in response to subsections (B)(5) and (6); the statement and history may be a self-declaration of illness and treatment;
8. Employment information, including names and addresses of prior employers and positions held during the last 10 years;
9. Family relationship and support system information on the applicant's family and family of origin;
10. If the applicant is employed outside the home, the applicant shall provide a statement explaining the child care arrangements the applicant would make for a foster child during the applicant's working hours;
11. If the applicant is self employed, or conducts a business activity within the home, a statement explaining how the activities related to this business will not interfere with the care of a foster child;
12. A description of:
  - a. The applicant's daily routine and activities; and
  - b. The applicant's hobbies, and any education or volunteer activities in which the applicant regularly participates;
13. A description of any spiritual or religious beliefs and practices observed in the applicant's home;
14. Information on administrative or judicial proceedings in which the applicant has been or is a party, including:
  - a. Proceedings involving allegations of child maltreatment;
  - b. Dependency actions;
  - c. Actions involving severance or termination of parental rights;
  - d. Child support enforcement proceedings;
  - e. Adoption proceedings;
  - f. Criminal proceedings other than minor traffic violations;
  - g. Bankruptcy; and
  - h. Suspension, revocation, or denial of a license or certification;
15. The name, address, and telephone number of at least 5 references who can attest to the applicant's character and ability to care for children; no more than 2 of the references may be related to the applicant by blood or marriage; for married applicants, at least 2 of the 5 references shall know the applicants as a couple;
16. A description of the applicant's home and neighborhood;
17. A statement from the applicant as to:
  - a. The number of foster children the applicant would consider for placement; and
  - b. The characteristics of foster children the applicant would consider for placement; and
  - c. The characteristics of children, if any, for whom the applicant does not want to provide foster care;
18. A description of the applicant's prior experience, if any, as a foster parent, including:
  - a. The state in which the applicant provided foster care;
  - b. Whether the applicant was licensed, certified, or approved to provide care; and
  - c. Whether any disciplinary action was taken against



**Notices of Final Rulemaking**

- the applicant;
19. A description of the applicant's prior history of adoption certification, if any, including prior applications for certification, and the location and date of any certification denials;
  20. A description of the applicant's child care experience and child rearing practices;
  21. A statement from the applicant regarding the applicant's motivation for becoming a foster parent;
  22. A statement from the applicant describing how all other household members feel about the decision to foster children;
  23. A statement authorizing the licensing agency and the Licensing Authority to:
    - a. Verify the information contained in or filed with the application;
    - b. Perform background checks on the applicant and the applicant's household members, as prescribed in R6-5-5803 and R6-5-5807; and
    - c. Arrange for DHS to conduct a health and safety inspection of the applicant's home, as prescribed in A.R.S. § 8-504 and R6-5-5804;
  24. A statement from the applicant attesting to the truth of the information contained in the application; and
  25. The applicant's signature and date of application.
- C. The applicant and all adult household members shall also submit to fingerprinting and a criminal history check as prescribed in A.R.S. § 46-141 and this subsection.
1. On a form provided by the Department, the applicant and each adult household member shall certify whether he or she has ever committed, is awaiting trial for, or has ever been convicted of any of the following criminal offenses in this state or similar offenses in another state or jurisdiction:
    - a. Sexual abuse of a minor or vulnerable adult;
    - b. Incest;
    - c. First or second degree murder;
    - d. Kidnapping;
    - e. Arson;
    - f. Sexual assault;
    - g. Sexual exploitation of a minor or vulnerable adult;
    - h. Commercial sexual exploitation of a minor or vulnerable adult;
    - i. Felony offenses within the previous 10 years involving the manufacture or distribution of marijuana or dangerous or narcotic drugs;
    - j. Robbery;
    - k. A dangerous crime against children as defined in A.R.S. § 13-604.01;
    - l. Child abuse or abuse of a vulnerable adult;
    - m. Sexual conduct with a minor;
    - n. Molestation of a child or vulnerable adult;
    - o. Voluntary manslaughter; and
    - p. Aggravated assault.
  2. On a form provided by the Department, the applicant and each adult household member shall certify whether he or she has ever been convicted of, found by a court to have committed, or has committed, any of the following criminal offenses in this state or similar offenses in another state or jurisdiction:
    - a. A sex offense;

- b. A drug-related offense;
  - c. A theft-related offense;
  - d. A violence-related offense;
  - e. Child neglect or neglect of a vulnerable adult; and
  - f. Contributing to the delinquency of a minor.
- D. If an applicant applies to the Department as the licensing agency, the Department shall send the applicant a notice of administrative completeness or deficiencies, as prescribed by A.R.S. § 41-1074, indicating the additional information, if any, that the applicant must provide for a complete application package as described in R6-5-5806. The Department shall send the notice after receiving the application and before expiration of the administrative completeness review time frame described in R6-5-5813(2)(a).
- E. If the applicant does not supply the missing information, as prescribed in the notice, within 60 days of the notice date, the Department may close the file. An applicant whose file has been closed, who later wishes to become licensed, may reapply.

**R6-5-5803. Requirements for re-licensing**

- A. The foster home license expires 1 year from date of issuance.
- B. For re-licensing foster homes shall meet all requirements in R6-5-5802 above with the following exceptions:
  1. A statement of health as described in R6-5-5802(B)(5) shall be provided at least every 3rd year.
  2. Inspection by Department of Health Services shall be made at least every 3rd year.
  3. References are not required.
- C. Fingerprints must be obtained for any household member 18 years or older.
- D. Foster parents must participate in ongoing training as required by A.R.S. §§ 8-503(6) and 8-509 and additional training as required by the Department.

**R6-5-5803. Investigation of the Applicant**

- A. The licensing agency to which the applicant has applied shall investigate the applicant. Except as otherwise provided in subsection (E) for an in-home respite foster parent, the investigation shall include the measures listed in this Section.
  1. A representative of the licensing agency shall personally interview the applicant and the applicant's household members; the interviews shall:
    - a. Occur on at least 2 separate occasions, at least 1 of which shall take place at the applicant's residence;
    - b. Comprise no less than 4 hours of face-to-face contact, at least 1 hour of which shall be at the applicant's residence;
    - c. Include at least 1 separate interview with each member of the applicant's household who is age 5 or older; and
    - d. Include at least 1 joint interview with both applicants if the applicants are married.
  2. During the interviews described in subsection (A)(1), the investigator shall explore any instances of family problems and how the applicant has overcome problems in the applicant's current family and family of origin.
  3. The licensing agency shall obtain written statements from at least 3 of the applicant's personal references listed pursuant to R6-5-5802(B)(15) and shall personally contact (either in a face-to-face meeting or a telephone call) at least 1 of the references.
  4. The licensing agency shall verify the applicant's financial condition through a review of 1 or more of the documents

listed in subsection (B)(8) below.

5. The licensing agency shall investigate and evaluate the applicant's past experiences, if any, serving as a foster parent.
6. The licensing agency shall assess the applicant and the family's commitment to providing foster care, and the time available to devote to the care of a foster child.
- B. The licensing agency shall request, and the applicant shall provide, supporting documentation the licensing agency deems necessary to determine an applicant's fitness to serve as a foster parent and ability to comply with foster care requirements. The documentation may include the following:
  1. A physician's statement regarding the physical health or immunization record of the applicant's household members;
  2. A statement from a psychiatrist or psychologist regarding the mental health of the applicant or the applicant's household members;
  3. Birth certificate;
  4. Marriage license;
  5. Driver's license and automobile registration;
  6. Dissolution or divorce papers and orders, including child support documentation;
  7. Military discharge papers;
  8. Tax returns, pay stubs, W-2 statements, and existing financial statements;
  9. Bankruptcy papers;
  10. Insurance policy information;
  11. Immigration or legal residency registration papers; and
  12. Documents related to or filed in judicial or administrative proceedings listed pursuant to R6-5-5802(B)(14).
- C. Except as otherwise provided in subsection (E), the licensing agency shall verify that the applicant and adult household members have submitted a fingerprinting and criminal background form as prescribed in R6-5-5802(C).
- D. The licensing agency shall document all personal contacts made, and all information obtained during the investigation.
- E. When a person is seeking licensure solely as an in-home respite foster parent, the licensing agency is not required to:
  1. Interview the applicant's spouse and other household members;
  2. Conduct the applicant's interview at the applicant's home;
  3. Verify the applicant's financial condition as required by subsection (A)(4) and R6-5-5805(B)(7);
  4. Obtain supporting documentation for the applicant's spouse or other household members as required by this Section; or
  5. Document information on the applicant's spouse and household members in the investigative report or application package as required by R6-5-5805 and R6-5-5806.

**R6-5-5804. Standards of child care**

- A. Supervision. The foster parent shall:
  1. Provide the child with positive emotional support and guidance.
  2. Provide the child with supervision, medical and dental care, training and education according to individual need.
  3. Provide opportunities for social and physical development through recreation and leisure time activities.
  4. Have consistent and established child care plans, acceptable to the Department, at all times.

5. Provide opportunity for the child to pursue his own religious beliefs or those held by his or her biological family.
  6. Assign tasks and work appropriate to age and abilities of the child and which do not interfere with school, health or necessary recreation.
  7. Establish well defined rules which set the limits of behavior.
  8. Administer discipline appropriate to age, life experience, and individuality of each child.
    - a. Discipline affecting the necessities of life shall not be used.
    - b. Discipline, verbal or physical, inflicted in a severe, injurious, or degrading manner shall not be used.
- B. Physical care. The foster parent shall:
1. Provide a well balanced and adequate diet, to meet the nutritional needs of the child.
  2. Provide the child with age appropriate clothing which shall go with the child upon removal from care.
  3. Dress non-ambulatory children daily in their own clothing, including shoes, unless contraindicated in written medical orders which shall be reviewed periodically.
  4. Provide comfortable and safe sleeping arrangements for each child.
    - a. Foster children shall sleep within calling distance of the foster parent and shall not sleep in an unfinished attic, in an unfinished basement, or in a hall or any other room which is normally used for other than sleeping arrangements.
    - b. Foster children over 2 years of age shall not sleep in the bedroom of the foster parent(s) except for special temporary care, such as during a child's illness.
    - c. Foster children 6 years of age or over shall not share rooms with children of the opposite sex.
  5. Provide transportation to meet the educational, medical, therapeutic, and social needs of the foster children.

**R6-5-5804. Inspection of the Foster Home; DHS Inspection Report**

- A. The licensing agency shall contact the Department of Health Services (DHS) to request that a DHS representative:
  1. Inspect the foster home, as prescribed in A.R.S. § 8-504 and this Section; and
  2. Issue a report describing whether the foster home satisfies foster care requirements.
- B. The applicant shall cooperate with the DHS representative by making the home available for inspection and allowing the DHS representative unrestricted access to the entire foster home and the surrounding premises to perform the following checks on the systems, equipment, and conditions:
  1. Check the home's heating, cooling, ventilation and lighting systems, and major appliances;
  2. Look at furniture, fixtures, and equipment for evidence of loose hardware, rusting parts, and other damage;
  3. Check walls, ceilings, and floors for evidence of flaking paint or plaster, loose tiles, boards, and panels, and exposed or unsafe wiring that may pose a danger or health risk to a child;
  4. Check the home and surrounding premises for evidence of dirt, animal waste, and vermin;
  5. Check whether the sewage disposal system functions and is in good repair;



**Notices of Final Rulemaking**

6. Check the system, method, and timing for refuse and waste storage and removal;
7. Check whether dangerous objects, materials, or conditions, have been locked, safeguarded, or removed as prescribed in this Article;
8. Determine whether the home has the equipment and space prescribed in R6-5-5838 through R6-5-5846.
- C. The DHS representative shall prepare a written report of the inspection and send a copy to the licensing agency.
- D. To determine if a foster home and its surrounding premises are safe, sanitary, and in good repair, the licensing agency or Licensing Authority shall evaluate the DHS written report to determine whether the home has any natural or man-made conditions that pose a risk of harm to a foster child, and whether a foster parent has taken or can take reasonable measures to eliminate that risk of harm and ensure that a foster child will not be harmed by a particular object, substance, or activity.
- E. This Section does not apply to a person seeking licensure solely as an in-home respite foster parent.

**R6-5-5805. Responsibilities to Department or placing agency**  
The foster parent shall:

1. Work as a team member with the Department or placing agency and other professionals developing and implementing the child's casework plan.
2. Immediately report to the Department or placing agency any serious illness, serious injury or any unusual circumstances affecting the health, safety, or physical or emotional well being of the child.
3. Make every reasonable effort to support and maintain the child's relationships with his biological family and other persons important to the child's life, as approved or required by the Department or placing agency of the court.
4. Maintain custodial care of foster children. Visitations or outings with other adults must be approved by the Department or placing agency.
5. Maintain a confidential record for each foster child of social, medical and educational events important to the child, including pictures.
6. Use clothing money provided by the Department only for the child and maintain records of expenditures for clothing.
7. Give to the child the personal allowance provided by the Department for his use and which is over and above the normal expenses paid for by the Department.
8. Notify the Department or placing agency when the foster parent:
  - a. Changes residency or builds an addition to the home. Such change requires a Department of Health Services inspection.
  - b. Changes marital status or living arrangements.
  - c. Changes the family composition when a new member is added to the household or when a temporary visitor stays more than 1 month. When any new member or temporary visitor stays more than 2 months the foster parent shall notify the Department in order that further investigation may be made to determine if, with the additional person in the home, the licensing standards are still met.
9. Not provide categories of care other than foster care,

except that a foster home may provide both respite care and foster care simultaneously so long as the total number of children at any 1 time does not exceed the limit set out in the foster family home license.

10. Not combine care of adults and children, except in the case of an unmarried mother and her child or in the case of persons under 21 years of age who voluntarily remain in foster care, and who are currently enrolled in and regularly attending school and have not received high school diplomas or certificates of equivalency.
11. Not accept adult roomers or boarders. An exception would be if the roomer or boarder has been with the family for a long period of time and is considered a member of the family. In this case, all the requirements for the family must also be met by the roomer or boarder. Another exception is that foster children reaching 18 years of age may remain in the home as roomers, if the plan is approved by the licensing agency.
12. Treat all information concerning a child and the parents as confidential. The foster parents shall not disclose confidential information without authorization of the placing agency.

**R6-5-5805. Investigative Report and Licensing Recommendation**

- A. The licensing agency shall summarize the results of the investigation in a written report, which shall include:
  1. A recommendation to grant or deny a license;
  2. Any recommendations for terms, conditions, or limitations to be placed on the license.
- B. In determining whether to recommend that a license be granted or denied, the licensing agency and Licensing Authority shall consider all information acquired during the investigation, and all factors bearing on the applicant's fitness to foster a child and comply with foster care requirements including:
  1. Instances of family problems in the applicant's current family or family of origin, including whether the applicant was maltreated as a child, and the applicant's success in overcoming those problems;
  2. The applicant's past history of parenting or caring for children;
  3. The length and stability of the applicant's marital relationship, if applicable;
  4. The applicant's age and health;
  5. Past, significant disturbances or events in the applicant's immediate family, such as involuntary job separation, bankruptcy, divorce, or death of spouse, child, or parent;
  6. Past criminal history or record of child maltreatment for the applicant or the applicant's household members;
  7. The applicant's financial stability, exclusive of anticipated foster care maintenance payments, and ability to financially provide for a foster child;
  8. The applicant's history of providing financial support to the applicant's other children, including compliance with court ordered child support obligations; and
  9. The DHS report on the foster home and whether the applicant has corrected any deficiencies or problems noted in the report.
- C. The investigative summary shall specifically note any instances where an applicant has been:
  1. Charged with, been convicted of, pled no contest to, or is

*Arizona Administrative Register*  
**Notices of Final Rulemaking**

awaiting trial on charges of an offense listed in R6-5-5802(C); and

2. A party to an action for dependency or termination of parental rights.

D. R6-5-5805(B)(3), (7), and (9) do not apply to a person seeking licensure solely as an in-home respite foster parent.

**R6-5-5806. Denial, suspension, or revocation of license**

A. The denial, suspension, or revocation of a license shall be in compliance with A.R.S. § 8-506 and A.C.R.R. R6-5-24. The Department shall deny, suspend, or revoke any license when:

1. The foster home is not in compliance with the licensing standards of the Department, Arizona state or federal statutes, city or county ordinances or codes.
2. The applicants or foster parents refuse to cooperate in obtaining information necessary to determine whether these standards have been met.
3. Any member of the household 18 years of age or older who has been convicted of or found by a court to have committed or is reasonably believed to have committed a sex offense, a drug-related offense, a violence-related offense, child abuse, child neglect, or contributing to a delinquency of a minor and there is reason to believe that the person may again commit any of the described offenses. In determining whether the person may again commit any of the described offenses, the Department may consider any relevant factors including, but not limited to, the following:
  - a. The extent of the person's criminal record, if any;
  - b. The length of time which has elapsed since offense occurred;
  - c. The nature of the offense;
  - d. The circumstances surrounding the offense;
  - e. The degree of participation by the person in the offense;
  - f. The extent of rehabilitation of the person.
4. There is a material misrepresentation or a willful failure to disclose pertinent information by the foster parents to the Department or to a licensed child welfare agency relating to the foster parents qualifications, experience, or performance of responsibilities, or
5. The Department's assessment of the family indicates an inability to meet the physical or emotional needs of children.

B. The Department is not obligated to make referrals to a licensed family foster home.

**R6-5-5806. Complete Application Package: Contents**

A. The licensing agency shall send a complete application package to the Licensing Authority for consideration.

B. A complete application package includes the following:

1. A copy of the applicant's completed application form and criminal history certification form containing the information prescribed in R6-5-5802(B) and (C);
2. The investigative report, as prescribed in R6-5-5805;
3. Evidence that the applicant and adult household members have been fingerprinted and their fingerprints subjected to a criminal history check;
4. Evidence that the applicant has completed the training prescribed by A.R.S. § 8-509(B) and R6-5-5825(A), or a statement of hardship as prescribed in R6-5-5810; and
5. Evidence that the applicant's dwelling has passed the

health and safety inspection prescribed by A.R.S. § 8-504 and R6-5-5804.

C. Upon receipt of an application package from a licensing agency other than the Department, the Licensing Authority shall:

1. Determine whether the application is complete; and
2. Send the applicant and the licensing agency a notice of administrative completeness or deficiencies, as prescribed by A.R.S. § 41-1074, within the administrative completeness review time frame described in R6-5-5813(1)(a).

D. If the applicant does not supply the missing information, as prescribed in the notice, within 60 days of the notice date, the licensing agency may close the file. An applicant whose file has been closed, who later wishes to become licensed, may reapply.

**R6-5-5807. Waiver of licensing standards**

A. The Department in consultation with the Attorney General's Office, may waive compliance with a licensing standard required by these rules and not otherwise required by law if the following requirements are met:

1. It is found to be in the best interests of a particular foster child to be placed in a particular home; and
2. The purpose of the standard being waived is otherwise fulfilled.

B. In waiving compliance with a licensing standard the Department shall make written findings of fact and conclusions supporting the waiver requirements set out above.

**R6-5-5807. CPSCR Check; Additional Investigation by Licensing Authority**

A. The Licensing Authority shall conduct a CPSCR check on the applicant and, with the exception of an in-home respite foster parent applicant, on all household members for reports of child maltreatment.

B. Upon receipt of a complete application package, as prescribed in R6-5-5806, the Licensing Authority may do additional investigation, as prescribed in this Section, if the Licensing Authority needs additional information in order to determine the applicant's fitness to serve as a foster parent, and ability to comply with foster care requirements.

1. The Licensing Authority may directly obtain information by:
  - a. Interviewing the applicant, either in-person or telephonically;
  - b. Contacting additional references;
  - c. Verifying information provided in the application package, including past history of licensure as a foster parent;
  - d. Visiting the applicant's home; and
  - e. Requesting additional supporting documentation as prescribed in R6-5-5803(B).

2. The Licensing Authority may contact the licensing agency and request that the licensing agency obtain additional information, as prescribed in subsection (B)(1).

**R6-5-5808. License: Form; Issuance; Denial; Term; Termination**

A. Within 30 days of receiving a complete application, the Licensing Authority shall issue a written licensing decision.

1. If the Licensing Authority grants the license, the Licensing Authority shall send the license with the notification letter. The license shall be in the name of the applicant

**Notices of Final Rulemaking**

and the foster home location as identified in the application. The license shall specify the number, age, and gender of children the foster home may accept.

2. The Licensing Authority may place terms on the license as to the type of child the foster home may accept for placement. Such terms may include the following:
  - a. A restriction that the foster home can accept only a specifically named child or specifically named children; and
  - b. A provision that the home can provide a particular service, or accept children with particular behavior problems or physical conditions.
3. A license for a person being licensed solely as an in-home respite foster parent shall include only the licensee's name and the type of care, but no specific location or other terms.
4. If the Licensing Authority denies the license, the notice shall include the reasons for the denial, with a statement of the applicant's right to appeal the licensing decision, as prescribed in R6-5-5821.

- B. A license expires 1 year from the date of issuance. If a foster parent receives a provisional license as prescribed in R6-5-5810, and the provisional license is converted to a regular license during the licensing year, the regular license shall expire 1 year from the date the provisional license was issued.
- C. A foster parent shall not transfer or assign a license. A license expires if the foster parent moves to a different dwelling unless the licensing agency has first notified the Licensing Authority of the planned move or a foster parent has requested an amendment to the license as prescribed in R6-5-5814. This requirement does not apply to a person licensed solely as an in-home respite foster parent.
- D. Issuance of a license does not guarantee placement of a foster child.
- E. A license terminates when:
  1. The license expires by its own terms and is not renewed;
  2. The Licensing Authority revokes the license pursuant to disciplinary proceedings as prescribed in R6-5-5819;
  3. The foster parent moves out of state; or
  4. The foster parent voluntarily surrenders the license.

**R6-5-5809. Provisional License**

Notwithstanding any other provision of this Article, the Licensing Authority may issue a provisional license to a foster parent who has not completed training, when the Licensing Authority makes a finding of hardship as prescribed in A.R.S. § 8-509(D). The Licensing Authority may find a condition of hardship when failure to issue a provisional license would result in displacement of a child or the inability to place a particular child.

1. The term of a provisional license shall not exceed 6 months.
2. A provisional license is not renewable.

**R6-5-5810. Application for License Renewal**

- A. At least 60 days before the expiration date of a license, the licensing agency shall send a foster parent a notice of license expiration.
- B. A foster parent may apply to a licensing agency for license renewal by submitting a complete renewal application to the licensing agency at least 30 days before the expiration of the current license.
- C. A complete renewal application shall contain the following information:

1. A description of any changes to the information provided in the original application or last renewal application, including changes in personal, family, social, medical, or financial circumstances;
  2. At least once every 3rd year following original licensure, a licensed medical practitioner's statement on the physical health of the foster parent and any household members who regularly care for children;
  3. Evidence that the foster parent has obtained the annual training required by A.R.S. § 8-509(C); and
  4. The statements, signature, and date prescribed in R6-5-5802(B)(23) through (25).
- D. A foster parent shall submit copies of the supporting documents listed in R6-5-5803(B) if so requested by the licensing agency.
  - E. The foster parent and adult household members shall comply with any investigative requirement for fingerprint clearance.

**R6-5-5811. Renewal Investigation; Licensing Report and Recommendation**

- A. A licensing agency that receives a renewal application shall conduct a face-to-face interview with the foster parent at the foster parent's residence. The licensing agency is not required to conduct the interview of a person licensed solely as an in-home respite foster parent at the person's residence. During the interview, the licensing agency shall discuss the following:
  1. The foster parent's experiences in serving as a foster parent during the expiring licensing year;
  2. Any changes identified in the renewal application; and
  3. Any complaints made against the foster parent during the expiring licensing year.
- B. The licensing agency shall obtain any supplemental information the agency needs to determine the foster parent's continuing fitness to serve as a foster parent.
- C. The licensing agency shall request a statewide criminal history records information check every year for the foster parent and, with the exception of an in-home respite foster parent, all adult household members.
- D. The licensing agency shall request that DHS perform a health and safety inspection of the foster parent's home, as prescribed in R6-5-5804, at least once every 3rd year following original licensure. This inspection is not required of a person licensed solely as an in-home respite foster parent.
- E. The licensing agency shall summarize the results of the renewal investigation in a report and make a licensing recommendation as prescribed in R6-5-5805. The report shall explain any complaints, as described in R6-5-5816, R6-5-5817, and R6-5-5818, made against the foster parent during the expiring license period.
- F. No less than 15 working days before the date that the applicant's current license expires, the licensing agency shall provide the Licensing Authority with a complete renewal application as prescribed in R6-5-5810, and the agency's renewal investigation report as prescribed in R6-5-5811.

**R6-5-5812. Renewal License**

- A. The Licensing Authority shall process a renewal application package pursuant to the procedures described in R6-5-5806(C), R6-5-5807, and R6-5-5808.
- B. In determining whether to renew a license, the Licensing Authority shall consider the renewal application package, and the foster parent's past record of service, including conduct during all prior licensing periods.
- C. The Licensing Authority may renew a foster parent's license when the foster parent:

**Notices of Final Rulemaking**

1. Demonstrates the ability to fulfill foster care requirements.
2. Has complied with foster care requirements during prior licensing periods, and
3. Has cooperated with the licensing agency in providing the information required for license renewal.

**R6-5-5813. Licensing Time Frames**

For the purpose of A.R.S. § 41-1073, the Department has adopted the licensing time frames listed in this Section.

1. Initial applications submitted to a licensing agency other than the Department: When a person applies for foster parent licensure through a licensing agency other than the Department, and the licensing agency submits the completed application package to the Licensing Authority on behalf of the applicant, the licensing time frames are:
  - a. Administrative completeness review time frame: 30 days;
  - b. Substantive review time frame: 30 days; and
  - c. Overall time frame: 60 days.
2. Initial application submitted to the Department as the licensing agency: When a person applies directly to the Department for foster parent licensure, and the Department performs the activities described in R6-5-5803 through R6-5-5806, the licensing time frames are:
  - a. Administrative completeness review time frame: 90 days;
  - b. Substantive review time frame: 30 days; and
  - c. Overall time frame: 120 days.
3. Renewal applications submitted to a licensing agency other than the Department: When a person applies for renewal of a foster parent license through a licensing agency other than the Department, and the licensing agency submits the completed renewal application package to the Licensing Authority on behalf of the applicant, the licensing time frames are:
  - a. Administrative completeness review time frame: 21 days;
  - b. Substantive review time frame: 21 days; and
  - c. Overall time frame: 42 days.
4. Renewal applications submitted to the Department as the licensing agency: When a person applies directly to the Department for renewal of a foster parent license, and the Department performs the activities described in R6-5-5812, the licensing time frames are:
  - a. Administrative completeness review time frame: 40 days;
  - b. Substantive review time frame: 20 days; and
  - c. Overall time frame: 60 days.

**R6-5-5814. Amended License; Change in Household Members**

- A. The following changes require a license amendment:
1. A change in any circumstances or conditions placed on the license, as prescribed in R6-5-5808(A)(2);
  2. Expanded or reduced capacity of the foster home;
  3. A move to a different residence;
  4. The divorce of the foster parent, if the divorce changes any circumstance or condition placed on the license;
  5. Marriage of the foster parent;
  6. The death of the foster parent's spouse if the death

changes any circumstance or condition placed on the license; and

7. A change of name.
- B. The foster parent may request a license amendment or the licensing agency may initiate the amendment in response to an observed change. The Licensing Authority may issue an amended license to reflect a change in circumstances when the change does not cause the foster parent or foster home to fall out of compliance with foster care requirements.
- C. If the foster parent has moved to a different residence or remodeled an existing residence, the Licensing Authority shall not issue an amended license until the different or remodeled residence has passed a health and safety inspection as prescribed in R6-5-5804.
- D. An amended license expires at the end of the foster parent's current licensing year.
- E. If the foster parent adds a household member during the course of a licensing year, the foster parent shall:
1. Obtain prior approval from the licensing agency;
  2. Ensure that a new adult household member submits a criminal history certification and submits to fingerprinting as prescribed in R6-5-5802(C), within 10 work days of the member's arrival;
  3. Ensure that a new child household member obtains any missing, routine immunizations within 30 calendar days of the member's arrival; and
  4. Cooperate in additional interviews and submit additional documentation that the licensing agency or Licensing Authority may require to determine whether the addition of the new member will cause the foster parent to fall out of compliance with foster care requirements.
- F. In determining whether to approve the addition of the new household member, the licensing agency shall consider:
1. The relationship of the new household member to the foster parent;
  2. The length of time the foster parent has known the new household member;
  3. The background of the new household member including any criminal history;
  4. The financial arrangements, if any, between the foster parent and the new household member;
  5. What, if any, child care responsibilities the new household member may have;
  6. Whether the new household member has any physical or emotional conditions that present a risk to foster children and current household members; and
  7. Whether the home will still meet the equipment and space requirements prescribed in R6-5-5838 through R6-5-5846 with the addition of the new household member.
- G. If the foster parent marries during the course of a licensing year:
1. The foster parent's spouse shall submit an application for a license as prescribed in R6-5-5802 and R6-5-5803;
  2. The foster parent's spouse shall be investigated in accordance with R6-5-5803, R6-5-5805, R6-5-5806, R6-5-5807, R6-5-5823, and R6-5-5824; and
  3. The foster parent shall comply with subsection (E) and with subsection (C) if the foster parent moves.
- H. A person licensed solely as an in-home respite foster parent is exempt from the requirements of subsections (B)(2) and (3), (C), (E), (F), and (G).

**Notices of Final Rulemaking**

**R6-5-5815. Monitoring the Foster Home and Family**

- A. A licensing agency shall monitor its foster homes.
- B. Monitoring activities may include the following:
  - 1. Announced and unannounced visits to the foster home;
  - 2. Interviews with the foster parent and household members over age 5;
  - 3. Interviews with foster children placed with a foster parent, if developmentally appropriate; any interviews with a foster child may occur with the foster child separated from the foster parent; and
  - 4. A review of any records a foster parent is required to maintain.
- C. A foster parent shall cooperate with monitoring requirements by:
  - 1. Making the foster home available for inspection, and
  - 2. Participating in interviews and permitting interviews with household members.
- D. When a licensing agency finds a violation of a foster home requirement, the licensing agency shall orally notify the Licensing Authority of the violation, and shall follow the oral report with a written report that shall include a recommendation for any licensing action or a corrective action plan, as prescribed in R6-5-5818 and R6-5-5819.

**R6-5-5816. Investigation of Complaints About a Foster Home**

- A. When a licensing agency receives a complaint about a foster home or licensee, the licensing agency shall:
  - 1. Immediately report allegations of child abuse, neglect, or maltreatment to Child Protective Services Central Intake as prescribed in A.R.S. § 13-3620; and
  - 2. Report all complaints to the Licensing Authority within 5 days and investigate all complaints, not reported to CPS, as prescribed in this Section.
- B. An investigation may include:
  - 1. Interviews with the complaining party and members of the foster home;
  - 2. Inspections of the foster parent's records and documents related to the issues raised in the complaint;
  - 3. Interviews of witnesses to the matters at issue; and
  - 4. Any other activities necessary to substantiate or refute the complaint.
- C. The licensing agency shall complete the investigation within 60 days. If the investigation can not be completed within 60 days, the licensing agency shall notify the Licensing Authority and provide a date for completion of the investigation.
- D. When the investigation is completed, the licensing agency shall send the Licensing Authority a written summary of the results.

**R6-5-5817. Licensing Authority Action On Complaints**

After the licensing agency reports the results of its investigation, the Licensing Authority shall determine what action to take against a licensee, as prescribed in this Section.

- 1. If the licensee did not violate foster care requirements, the Licensing Authority shall take no further action.
- 2. If the licensee violated a foster care requirement, but has corrected the problem giving rise to the violation, the Licensing Authority shall record the incident in the licensing file, and may take no further action.
- 3. If the licensee violated a foster care requirement and there is reasonable cause to believe that the licensing violation is continuing or may reoccur, the Licensing Authority

shall take licensing action as prescribed in R6-5-5819, or require corrective action as prescribed in R6-5-5818.

**R6-5-5818. Corrective Action**

- A. If a deficiency giving rise to a substantiated complaint is correctable within a specified period of time and does not jeopardize the health or safety of a foster child, the Licensing Authority, in consultation with the licensing agency, may place the foster parent on a corrective action plan to remedy the deficiency.
- B. In determining whether to require corrective action, the Licensing Authority shall consider the following criteria:
  - 1. The nature of the violation;
  - 2. Whether the violation can be corrected;
  - 3. Whether the foster parent understands the violation and shows a willingness and ability to participate in corrective action;
  - 4. The length of time required to implement corrective action;
  - 5. Whether the same or similar violations have occurred on prior occasions;
  - 6. Whether the foster parent has had prior corrective action plans, and, if so, the foster parent's success in achieving the goals of the plan;
  - 7. The foster parent's history as a foster parent; and
  - 8. Other similar or comparable factors demonstrating the foster parent's ability and willingness to follow through with a corrective action plan and avoid future violations.

**R6-5-5819. License Denial, Suspension, and Revocation**

- A. The Licensing Authority may deny, suspend, or revoke a license when:
  - 1. An applicant or licensee has violated or is not in compliance with foster care requirements, Arizona state or federal statutes, or city or county ordinances or codes;
  - 2. An applicant or licensee refuses or fails to cooperate with the Licensing Authority in providing information required by these rules or any information required to determine compliance with these rules;
  - 3. An applicant or licensee misrepresents or fails to disclose material information to the Licensing Authority, the licensing agency, or a placing agency regarding qualifications, experience, or performance of duties;
  - 4. An applicant or licensee is unable to meet the physical, emotional, social, educational, or psychological needs of children; or
  - 5. A licensee fails to comply with a corrective action plan.
- B. In determining whether to take disciplinary action against a licensee, or to grant or renew a license, the Licensing Authority may consider the applicant or licensee's past history from other licensing periods, and shall consider a repetitive pattern of violations of applicable child welfare or foster care rules or statutes, as evidence that a license applicant or licensee is unable or unwilling to meet the needs of children.
- C. The Licensing Authority shall deny a license when an applicant, licensee, or household member has been convicted of or is awaiting trial on the criminal offenses listed in R6-5-5802(C)(1) in Arizona or the same or similar offenses in other jurisdictions.
- D. The Licensing Authority may deny a license when an applicant, licensee, or household member has been convicted of, found by a court to have committed, or is reasonably believed to have committed any criminal offense, other than those listed in R6-5-5802(C)(1). To determine whether the criminal his-

*Arizona Administrative Register*  
**Notices of Final Rulemaking**

tory of an applicant, licensee, or household member affects a person's fitness to be a licensee, the Licensing Authority shall consider all relevant factors, including the following:

1. The extent of the person's criminal record;
  2. The length of time which has elapsed since the offense was committed;
  3. The nature of the offense;
  4. The mitigating circumstances surrounding the offense;
  5. The degree of participation by the person in the offense;
  6. The extent of the person's rehabilitation, including:
    - a. Completion of probation or parole;
    - b. Whether the person has made restitution or paid compensation for the offense;
    - c. Evidence of positive action to change criminal behavior, such as completion of a drug treatment program or counseling; and
    - d. Personal references attesting to the person's rehabilitation.
- E. The Licensing Authority may deny, suspend, or revoke a license if the applicant, licensee, or household member is, or resides with, a person who has a record of substantiated or undetermined child maltreatment in this state or any other jurisdiction. To determine whether an applicant, licensee, or household member's history of child maltreatment affects a person's fitness to serve as a foster parent, the Licensing Authority shall consider all relevant factors, including, but not limited to, the following:
1. Whether the person was subjected to child maltreatment in his or her family of origin;
  2. The extent of the person's child maltreatment record;
  3. The length of time which has elapsed since the maltreatment occurred;
  4. The nature of the maltreatment;
  5. The circumstances surrounding the maltreatment;
  6. The degree to which the person participated in the maltreatment;
  7. The extent of the person's rehabilitation;
  8. Whether the person is on probation or parole; and
  9. Whether legal proceedings were initiated as a result of the maltreatment.
- F. The person seeking to establish fitness to be a licensee pursuant to subsection (D) has the burden of proving mitigating circumstances, indirect involvement, and the completion of probation or parole.
- G. The Licensing Authority shall not deny, suspend or revoke the license of an in-home respite foster parent based on the actions of the foster parent's household members as identified in (C), (D), and (E) above unless such actions interfere with the foster parent's ability to comply with this Article or relate to any child for whom the foster parent provides respite care.

**R6-5-5820. Adverse Action; Notice; Effective Date**

- A. When the Licensing Authority denies, suspends, or revokes a license, the Licensing Authority shall send a written, dated notice of the action by certified mail to:
1. The applicant or licensee;
  2. The licensing agency; and
  3. The placing agency for any child placed with the licensee at the time of the action.
- B. The notice shall specify:
1. The action taken and the date the action will be effective;
  2. A citation to the legal authority, and a description of the reasons supporting the action; and

3. The procedures by which the applicant or licensee may contest the action taken, and the time periods in which to do so.

C. A revocation is effective:

1. Twenty-one days after the postmark date of the revocation notice; or
2. If the licensee appeals the revocation, on the date that an administrative hearing officer issues a written decision affirming the revocation.

**R6-5-5821. Appeals**

- A. An applicant or licensee may appeal the denial, suspension, or revocation of a license pursuant to the procedures prescribed in R6-5-2405(A) through (H). Imposition of a provisional license or a corrective action plan is not appealable.
- B. To appeal, an applicant or licensee shall file a written notice of appeal with the Licensing Authority no later than 20 days from the date of the notice prescribed in R6-5-5820(A) and (B).
- C. The notice of appeal shall specify the action being appealed and a statement of why the Licensing Authority's action was wrong.
- D. Appeals from the decision of a hearing officer are governed by A.R.S. §§ 41-1992(D) and 41-1993.

**R6-5-5822. Alternative Methods of Compliance**

- A. The Licensing Authority, in consultation with the Attorney General's office, may substitute an alternative method of compliance for a foster care requirement contained in this Article and not otherwise required by law if the following conditions are met:
1. The Licensing Authority, in consultation with the licensing or placing agency, determines that placement in the foster home requesting an alternative method of compliance is in the best interests of a particular foster child; and
  2. The purpose of the requirement being replaced is fulfilled through the alternative method of compliance.
- B. If the Licensing Authority approves an alternative method of compliance for a foster care requirement contained in this Article, the Licensing Authority shall make written findings of fact and conclusions explaining how the requirements of subsection (A) are met.
- C. The Licensing Authority has no obligation to approve an alternative method of compliance and shall consider the particular facts and circumstances of each case when making such a determination.

**R6-5-5823. Foster Parent: General Qualifications**

To qualify for and maintain licensure as a foster parent, a person shall meet the criteria listed in this Section.

1. The person shall be at least 21 years old at the time of application.
2. The person shall have sufficient income, exclusive of the foster care maintenance payment, to meet the needs of the foster parent and the foster parent's own children and household members.
3. The applicant, foster parent, and adult household members shall be free of conviction or indictment for, or involvement in the criminal offenses listed in R6-5-5802(C).
4. The applicant, foster parent, and household members shall not have any physical or mental health conditions which preclude compliance with foster care requirements.
5. Each child residing in the foster home shall have all



**Notices of Final Rulemaking**

childhood immunizations appropriate to the child's age and health.

6. An applicant or foster parent shall not:
  - a. Conduct home business activities which prevent the applicant or foster parent from caring for a foster child in accordance with foster care requirements; or
  - b. Provide foster care for adults.
7. An applicant's or foster parent's household members shall agree to and support the decision to provide foster care.
8. An applicant or foster parent shall:
  - a. Cooperate with the licensing agency, the placing agency, and the Licensing Authority regarding any inspections or investigative activities; and
  - b. Provide information as prescribed in this Article.

**R6-5-5824. Foster Parent: Personal Characteristics**

To qualify for and maintain licensure as a foster parent, a person shall be a responsible, stable, emotionally mature individual who can exercise sound judgment. A person meets this requirement by demonstrating the following characteristics on the person's application and during the interview and investigation process:

1. The ability to realistically determine which foster children the person can accept, work with, and successfully integrate into the person's family;
2. Knowledge of child development, nutrition, health, and the various experiences a child may have, with which the foster parent may need assistance and guidance;
3. The willingness and ability to protect children from harm;
4. Knowledge and understanding of child discipline and ways of helping a child build positive personal relationships;
5. The following personal attributes:
  - a. The capacity to give and receive affection;
  - b. Enjoyment in being a parent or foster parent;
  - c. Flexibility in expectations, attitudes, behavior, and use of help when it is needed;
  - d. The ability to deal with separation, loss, frustration, and conflict;
6. The capacity to respect persons with differing life styles and philosophies, and persons of different races, cultures, and religious beliefs;
7. The ability to accept a foster child's relationship with the child's parent and birth family; and
8. The willingness and ability to commit the time necessary to provide a foster child with supervision and guidance in accordance with foster care requirements and a foster child's individual needs.

**R6-5-5825. Training and Development**

- A. Before receiving an initial license, an applicant shall complete at least 12 clock hours of initial foster parent training as prescribed in A.R.S. § 8-509(B). The training shall cover at least the following subjects:
  1. Characteristics and needs of children who may be placed in the foster home;
  2. The role of the foster parent as a member of the care and treatment team;
  3. The importance of birth parent and family involvement in a child's life;
  4. Methods for appropriately addressing the cultural, ethnic, and religious needs of a child in care;
  5. Attachment, separation, and loss issues for children and

families;

6. Behavior management policies and practices as prescribed in R6-5-5833;
  7. Confidentiality;
  8. Emergency procedures;
  9. Resources and supportive services available to foster children and foster parents;
  10. Foster care payment procedures;
  11. Placing agency and Licensing Authority contact persons and procedures;
  12. The impact of fostering on the foster parent and the foster parent's own family;
  13. Addressing and coping with the impacts described in subsection (A)(12);
  14. Specialized topics related to child welfare, health, growth, or development; and
  15. The Indian Child Welfare Act of 1978 (PL 95-608).
- B. Each licensing year, prior to license renewal, a foster parent shall attend and complete at least 6 clock hours of ongoing training as prescribed in A.R.S. § 8-509(C). Annual training may include:
    1. Advanced training in the subjects listed in subsection (A) above;
    2. Special subjects relating to child health, growth, or development, including:
      - a. Child management techniques based on the developmental needs of children in care;
      - b. Discipline, crisis intervention, and behavior management techniques; and
    3. Review of placing agency policies.
  - C. An applicant or licensee shall also complete any additional training required by the Licensing Authority, or the foster parent's licensing agency or placing agency to develop specialized skills and to meet or maintain compliance with foster care requirements.

**R6-5-5826. Compliance With Licensing Limitations: Adult - Child Ratios**

- A. A foster parent shall limit the number of children in the home as prescribed in subsections (A)(1) and (2) below. As used in this Section, "children in the home" means any child in the foster home, including children placed for respite care, child care services, or baby-sitting, the foster parent's own children, and children residing in the foster home.
  1. At all times, the total number of children in the home who are 5 years old or under shall not exceed more than 4 in the care of 1 adult.
  2. At all times, the total number of children in the home who are less than 1 year old, shall not exceed more than 2 in the care of 1 adult.
- B. A foster parent shall not care for more foster children than allowed and identified on the foster parent's license, and shall not exceed 5 foster children in addition to other children in the home.
- C. A foster parent shall abide by any terms or conditions placed on the foster parent's license when accepting a child for placement.

**R6-5-5827. Placement Agreement**

- A. For each child placed with a foster parent the foster parent shall have a written placement agreement meeting the requirements of subsection (B) with the foster child's placing agency.
- B. The placement agreement shall set forth the responsibilities of both the placing agency and the foster parent regarding:

**Notices of Final Rulemaking**

1. Provision of services for the foster child, including medical care, dental care, mental health care, other social services or treatment, and transportation;
  2. Requirements for interaction with the foster child's birth family.
- C. If a foster parent does not receive a copy of a placement agreement at the time of placement, the foster parent shall obtain an agreement within 5 work days following the date of placement. If the placing agency refuses to provide an agreement, the foster parent shall notify the Licensing Authority.

**R6-5-5828. Participation in Case Planning**

- A. A foster parent is a member of the service team for a foster child in the care of the foster parent. The service team includes the case manager, the foster parent, the licensing agency representative, and persons providing services, such as attorneys, physicians, psychologists, therapists, Court Appointed Special Advocates, and school, law enforcement, and probation personnel.
- B. A foster parent shall participate as a team member by:
1. Attending team meetings when:
    - a. The foster parent receives reasonable advance notice of the date, time, and place of the meeting; and
    - b. The meetings are held at a time and place which is accessible to the foster parent, and compatible with the foster parent's work schedule and child care schedule;
  2. Participating in team meetings through alternative methods, which may include:
    - a. Telephonic conference calls,
    - b. Submission of oral comments, and
    - c. Expressing concerns and comments to other team members who will attend the meeting;
  3. Reporting to the team on the foster child's progress and problems;
  4. Assisting in development of the case plan; and
  5. Assisting in case plan reviews.
- C. A foster parent shall implement the case plan by:
1. Performing the tasks assigned to the foster parent in the case plan,
  2. Helping a foster child to attain any goals identified in the case plan,
  3. Assisting a foster child to obtain any services specified in the case plan, and
  4. Observing any limitations or conditions contained in the case plan.

**R6-5-5829. Daily Care and Treatment of a Foster Child; Foster Child Rights**

- A. Non-exploitation and equitable treatment
1. A foster parent shall not exploit a foster child or permit a child to be exploited.
  2. A foster parent shall permit a foster child to exercise the rights, freedoms, and responsibilities of family life in a manner that is comparable to those exercised by foster family members, subject to:
    - a. Reasonable and developmentally appropriate household rules, and
    - b. Restrictions prescribed in a foster child's case plan and foster care requirements.
  3. As used in this Section, "reasonable" means conduct which takes into account:
    - a. The foster family's physical environment,

- b. The chores and responsibilities assigned to other household members,
- c. The foster child's school schedule and educational needs, and
- d. The foster child's social and recreational needs.

B. Religious and ethnic heritage

1. A foster parent shall recognize, encourage, and support the religious beliefs, cultural and ethnic heritage, and language of a foster child and the child's birth family.
2. A foster parent shall coordinate with the placing agency to provide opportunities for each foster child to participate in religious, cultural, and ethnic activities.
3. A foster parent shall not directly or indirectly compel a foster child to participate in religious activities or cultural and ethnic events against the child's will or the wishes of the child's birth parent.

C. Interaction with parents and birth family. A foster parent shall maintain a working relationship with a foster child's parent, birth family, and other significant persons, in accordance with the child's case plan and in cooperation with the placing agency staff.

D. Food and nutrition

1. A foster parent shall provide a foster child with well-balanced daily meals and sufficient food to meet the child's nutritional needs.
2. The foster parent shall provide for a foster child's special dietary needs as prescribed in the child's case plan, or the orders of a licensed medical practitioner.

E. Education

1. A foster parent shall send a foster child to public school unless alternative educational arrangements, such as private, charter, or home schooling, have been approved in the child's case plan.
2. A foster parent shall help the child in obtaining other educational services as prescribed in the child's case plan.

F. Clothing

1. A foster parent shall provide a foster child with clean, seasonal clothing appropriate to the child's age, sex, size, and individual needs.
2. A foster parent shall permit a foster child to participate in making decisions about clothing choices to the extent developmentally appropriate for the child.

G. Funds

1. A foster parent shall use monies provided by the placing agency for designated purposes only.
2. A foster parent shall retain receipts to document the use of designated monies except monies designated for room and board.

**R6-5-5830. Medical and Dental Care**

- A. A foster parent shall arrange for a foster child to have routine medical and dental care which shall include an annual medical exam, semi-annual dental exams, immunizations, and standard medical tests.
- B. When a foster child is placed with a foster parent, the foster parent shall determine whether the child has had a comprehensive medical exam within the past 2 months, and, for a child age 3 or older, a dental exam within the past 6 months.
- C. If a foster child has not had the medical or dental exam, the foster parent shall schedule the child for an exam within 2 weeks after the foster child is placed with the foster parent.
- D. As used in subsection (B), a comprehensive medical exam shall include:



*Arizona Administrative Register*  
**Notices of Final Rulemaking**

1. Screening for communicable disease,
2. Screening for vision and hearing,
3. A general physical examination by a licensed physician,
4. Provision of any routine immunizations or immunization boosters, and
5. Tests appropriate for the child's age and history.

**R6-5-5831. Child Care**

- A. A foster parent shall have a plan for supervision and care of a foster child placed with the foster parent.
- B. The plan shall be consistent with the foster child's case plan, and with the child's developmental, emotional, and physical needs, and the needs of the foster parent.
- C. A foster parent shall inform the placing agency and obtain approval for use of any person given the responsibility for care of a foster child, unless otherwise provided for in the child's case plan. The case plan may include the name of a specific child care agency or provider, and may give the foster parent discretion to allow the child to go on overnight visits with specifically named persons.

**R6-5-5832. Transportation**

- A. A foster parent shall provide or arrange appropriate local transportation to meet the routine educational, medical, recreational, social, spiritual, and therapeutic needs of a foster child, in accordance with the child's case plan, or, if not specified in the case plan, as provided in the placement agreement.
- B. A foster parent transporting foster children shall have a valid driver's license.
- C. A foster parent shall provide for the safety of a foster child when the child is transported in a motor vehicle by:
  1. Providing and using safety restraints appropriate to the age and weight of each child transported; and
  2. Prohibiting the number of persons in any vehicle from exceeding the number of available seats and seat belts in the vehicle.

**R6-5-5833. Behavior Management; Discipline; Prohibitions**

- A. A foster parent shall set limits and rules for children in care. The foster parent shall tell the children about the foster parent's expectations regarding child behavior, including forbidden conduct, and the foster parent's methods for disciplining children who violate expectations, limitations, and rules.
  1. A foster parent shall use discipline which is reasonable, developmentally appropriate, related to the infraction, and consistent with any guidelines in the child's case plan.
  2. A foster parent shall use disciplinary methods which help a foster child to build self-control, self-reliance, and self-esteem.
  3. A foster parent shall communicate rules, consequences, and disciplinary methods to a foster child in a manner appropriate to the child's age, developmental capacity, and ability to understand.
  4. A foster parent shall explain the foster parent's limits, rules, and expectations to any placing agency or person that places a child with the foster parent.
- B. A foster parent shall not delegate the responsibility for imposing discipline on a foster child to any person other than an adult assigned responsibility for the foster child, as prescribed in R6-5-5831(C), and made known to the child. If a foster parent delegates supervisory responsibility to another person, the foster parent shall instruct the person in the foster home limits, rules, and expectations, disciplinary methods specific to the foster child, and the limitations prescribed in this Article.

- C. A foster parent shall not punish or maltreat a foster child, and shall not allow any other person to do so. As used in this Section, "punishment or maltreatment" include, but are not limited to, the following actions:

1. Any type or threat of physical hitting or striking inflicted in any manner upon the body;
2. Verbal abuse, including arbitrary threats of removal from the foster home;
3. Disparaging remarks about a foster child or a foster child's birth family members or significant persons;
4. Deprivation of meals, clothing, bedding, shelter, or sleep;
5. Denial of visitation or communication with a foster child's birth family members and significant persons when such denial is inconsistent with the foster child's case plan;
6. Cruel, severe, depraved, or humiliating actions;
7. Locking a foster child in a room or confined area inside or outside of the foster home; and
8. Requiring a foster child to remain silent or be isolated for time periods that are not developmentally appropriate.

- D. A foster parent shall not use mechanical restraints.

- E. A foster parent shall not use physical restraint unless:

1. Permission to use physical restraint is specified in the child's case plan; and
2. The foster parent has been trained in the proper use of the physical restraint to be used with a particular foster child.

**R6-5-5834. Notification of Foster Child Death, Illness, Accident, Unauthorized Absence, or Other Unusual Events**

- A. Within 2 hours after a foster child suffers any of the following events, a foster parent shall notify the child's placing agency:

1. Death;
2. Serious illness or injury requiring hospitalization or emergency room treatment;
3. Any non-accidental injury or sign of maltreatment;
4. Unexplained absence;
5. Severe psychiatric episode;
6. Fire or other emergency requiring evacuation of the foster home;
7. Removal of a foster child from the foster home by any person or agency other than the placing agency, or attempts at such removal; and
8. Any other unusual circumstance or incident which might seriously affect the health, safety, or the physical or emotional well-being of a foster child.

- B. Within 48 hours of occurrence, a foster parent shall notify the placing agency of any other events likely to affect the well-being of a foster child in the foster parent's care, including the following circumstances:

1. Involvement of a foster child with law enforcement authorities;
2. Serious illness or death involving a member of the foster family's household or a significant person;
3. Change in foster family or household composition; and
4. Absence of 1 foster parent from a 2 parent household for more than 7 continuous days.

- C. Within 24 hours of giving notice as prescribed in subsection (A) or (B) above, a foster parent shall send the placing agency and licensing agency a written report on the event. The report shall include the following information:

1. A description of the event, with the date and time of occurrence;

2. The names and telephone numbers of any persons involved in the event;
3. Any measures taken to address, correct, or resolve the event, including treatment obtained, and persons notified.
- D. Within 2 days of receipt of the written report prescribed in subsection (C), the licensing agency shall send the written report to the Licensing Authority.

**R6-5-5835. Notification of Events or Changes Involving the Foster Family or the Foster Home**

- A. A foster parent shall notify the licensing agency of any changes in the foster family's composition including, but not limited to the following events:
  1. Marriage;
  2. Divorce;
  3. Addition of a new household member, including a temporary visitor expected to stay 1 month or longer; and
  4. Death or departure of a current household member.
- B. A foster parent shall notify the Licensing Authority of any substantial changes to the foster home, including:
  1. Fire or emergency requiring evacuation of the foster home;
  2. Moving to a new residence; and
  3. Remodeling the foster home.
- C. When a foster parent has advance knowledge of an event or change listed in subsection (A) or (B), the foster parent shall give reasonable advance notice of the anticipated event or change. Reasonable advance notice means notice which permits the licensing agency time to conduct an inspection, and the Licensing Authority time to issue an amended license, as prescribed in R6-5-5814, without disruption of a placement.
- D. If the event or change is unexpected, a foster parent shall give notice as soon as the event occurs or change is known.
- E. For events or persons not specifically listed in subsection (A) or (B), the foster parent shall give notice within 5 work days of the event or change.

**R6-5-5836. Maintenance of a Foster Child's Records**

- A. A foster parent shall maintain records for each foster child placed with the foster parent in accordance with the placing agency's requirements and this Section.
- B. The foster parent shall ensure that the records include at least the following:
  1. Information on a foster child, the foster child's birth family, and any other significant persons in the foster child's life, if the placing agency has provided such information to the foster parent, as follows:
    - a. Name,
    - b. Address,
    - c. Telephone number, and
    - d. A description of the person's relationship to the child.
  2. A record of the foster child's contacts with birth family members and other significant persons, including the person contacted, and the date and method of contact (visit, telephone call, or written communication);
  3. Medical and health information provided by the placing agency;
  4. A consent form or notice from the foster child's guardian authorizing the foster parent to obtain routine, nonsurgical medical care, and emergency medical and surgical treatment for the foster child;
  5. A record of the medical and dental care provided to the

foster child during the placement, including:

- a. Date of appointment;
- b. Description of any illness, injury, or health problem;
- c. Name, address, and telephone number of the medical practitioner who treated the child; and
- d. Resulting diagnosis and treatment, any prescribed medications, and any hospitalization;
6. Reports of any medical tests, information, or counseling received regarding routine, emergency, chronic, or handicapping conditions;
7. A copy of the child's current case plan;
8. Any progress notes the foster parent may record;
9. Notations or records of significant incidents, events, and activities;
10. Identification of any schools attended with dates of attendance, any school reports;
11. Memorabilia to help the foster child retain a memory of placement and a life record; the memorabilia may include photographs, diaries, journals, souvenirs, scrapbooks, and art projects;
12. Placement agreement with the placing agency;
13. A clothing inventory (clothing brought with the foster child at the time of placement) and a record of clothing purchased for the child during placement; and
14. At the time of the child's departure from the foster home, a description of the foster child's daily routine and personal preferences and habits such as favorite foods, fears and bedtime routines.
- C. A foster parent shall provide the record to the placing agency upon termination of the foster child's placement.

**R6-5-5837. Confidentiality**

- A. A foster parent shall maintain the confidentiality of all personally identifiable information about a foster child and a foster child's birth family. A foster parent may release information when so authorized by a foster child's placing agency, and, in an emergency, when release is necessary to protect the health or safety of the child.
- B. A foster parent shall safeguard a foster child's records in a manner that prevents loss, tampering, or unauthorized use.

**R6-5-5838. Foster Home: General Requirements**

- A. The foster home parent shall:
  1. Keep the foster home safe, in good repair, and sanitary, as described in R6-5-5804(C) through (E) and R6-5-5838 through R6-5-5846; and
  2. Keep the outside area around the foster home free from objects, materials, and conditions which constitute a danger to the occupants.
- B. If the foster parent accepts and provides care to a child with special physical needs, the foster parent shall equip the foster home with any equipment needed to accommodate the particular child's special needs.

**R6-5-5839. Foster Home: General Safety Measures**

- A. The foster home shall have a telephone or other mechanical device allowing 2-way communication with the outside community.
- B. A foster parent shall safeguard all hazardous chemicals, cleaning materials, toxic substances, and hazardous materials, objects, and equipment.
- C. A foster parent shall safeguard medical equipment and lock medications, except that the foster parent shall safeguard those medications that must be immediately and readily available for

**Notices of Final Rulemaking**

a family member or foster child.

- D. When a foster home has a private source of water, the foster parent shall have evidence that a state or local health authority has approved the water as potable water.
- E. The foster parent shall maintain the warm water in the foster home at a temperature that does not exceed 120° F.
- F. A foster parent shall store firearms and ammunition in locked storage which is inaccessible to children.
  - 1. A firearm shall be trigger-locked or fully inoperable while in storage.
  - 2. Ammunition shall be stored in a location separate from firearms.
- G. A foster parent shall not maintain any animal that poses a danger to a foster child.
- H. A foster parent shall provide evidence that dogs belonging to the foster family or routinely present on the foster home premises, have current vaccinations against rabies.

**R6-5-5840. Exterior Environment; Play Area; Play Equipment**

- A. The foster parent shall keep the outside play areas clean and safe. The play area shall be fenced if there are conditions which may pose a danger to a child playing outside. The age and developmental abilities of the child are considerations for determining risk to the child.
- B. The foster parent shall provide a variety of safe play equipment, toys, and supplies for each child. The age and developmental abilities of the child and standards in the community are considerations for determining the variety of play equipment, toys, and supplies required.

**R6-5-5841. Swimming Pools and Pool Safety**

- A. A foster home's swimming pool shall meet the requirements of this Section and the "swimming pool/spa" and "swimming pool guidelines" Section in the Sanitation Inspection Guidelines published by the Department of Health Services (DHS) (January 1996), and not including any later amendments or editions, which are incorporated by reference. Copies of these sections from the guidelines are available for inspection at the Secretary of State's Office, Public Services Department, 1700 West Washington, Phoenix, Arizona 85007, and for inspection and copying at the Department of Economic Security, Authority Library, 1789 West Washington, Phoenix, Arizona 85007, and the DHS, Office of Child Care Licensure, 1647 East Morten, Suite 230, Phoenix, Arizona 85020.
- B. If the foster parent cares for a foster child who is age 5 or under, the swimming pool shall be fenced so that the pool is separated from the house, or, otherwise made physically inaccessible to a foster child.
- C. A foster parent shall supervise a child who is in the swimming pool or surrounding area, in accordance with the child's age, capabilities, and developmental level.
- D. A foster parent shall have at least 1 person currently certified in cardiopulmonary resuscitation (CPR) present in the foster home's swimming pool area when a foster child age 13 and under is swimming in the foster home swimming pool.

**R6-5-5842. Bedrooms; Bedding; Sleeping Arrangements**

A foster parent shall provide safe sleeping arrangements which accommodate the privacy needs of a foster child, as prescribed in this Section.

- 1. The foster family and a foster child shall sleep in bedrooms. An unfinished attic, a basement area, or a space normally and primarily used for passageways and purposes other than sleeping are not bedrooms.
- 2. A bedroom in the foster home shall have a finished ceiling,

floor-to-ceiling permanently affixed walls, a door, finished flooring, light, ventilation, and a usable exit to the outdoors.

- 3. A foster parent shall provide each foster child with a bed.
  - a. The bed shall be appropriate to a child's age and needs.
  - b. For the purpose of this Section, "bed" does not include a cot, couch, convertible couch, portable bed, sleeping bag or mat, except as approved by the Licensing Authority.
  - c. No foster child shall sleep in a bunk bed of more than 2 tiers.
  - d. A foster child under age 8 shall not sleep in the top bunk of a 2 tier bunk bed.
- 4. A foster parent shall provide the following for each foster child:
  - a. A sanitary mattress;
  - b. A clean pillow;
  - c. Clean bed linens;
  - d. Blankets or covers, as appropriate to the weather;
  - e. A waterproof protective mattress cover, as needed; and
  - f. Furniture or shelving near the bed to store clothing and personal belongings.
- 5. A foster parent shall not allow a foster child to share a bedroom with an adult except as specified in this subsection.
  - a. A foster child under age 3 may share a bedroom with the foster parent.
  - b. A foster child who is age 3 or older may share a bedroom with the foster parent when:
    - i. The sleeping arrangement and the reason for it are described in a foster child's case plan; or
    - ii. The foster child temporarily requires the foster parent's attention during sleeping hours.
  - c. A foster child who has regularly shared a bedroom with another child in the foster home who has turned 18 may continue to share the bedroom with the child who has turned 18 unless the placing agency determines that the arrangement is contrary to the best interests of the foster child.
- 6. A foster parent shall not allow a foster child who is age 6 or over to share a bedroom with a child of the opposite gender.
- 7. Notwithstanding any other provision of this Section, a foster child who is a minor parent may share a room with her own child.

**R6-5-5843. Bathrooms**

- A. A foster home shall have at least 1 toilet, 1 wash basin, and 1 bathtub or shower.
- B. A foster parent shall:
  - 1. Maintain the foster home's toilets, washbasins, bathtubs, and showers in good working order; and
  - 2. Have slip resistant flooring for bathtubs and showers.
- C. A foster home bathroom shall have interior plumbing with both warm and cold water.

**R6-5-5844. Kitchen**

- A. A foster home shall have a kitchen that is equipped for safe and sanitary preparation, serving, and storage of food.
- B. The kitchen shall have interior plumbing with both warm and

**Arizona Administrative Register**  
**Notices of Final Rulemaking**

cold water.

- C. The kitchen shall have an operable refrigerator, stove, and oven.

**R6-5-5845. Fire Safety and Prevention**

- A. The foster parent shall install and maintain at least 1, single-station smoke detector approved by a nationally recognized testing laboratory in the following areas of the foster home:
1. On each floor in a multi-story dwelling;
  2. In each separate sleeping area.
- B. A foster parent shall install and maintain at least 1 ABC-type fire extinguisher on each floor of the foster home; except if the foster home is a manufactured home, the foster parent shall have at least 2 fire extinguishers placed at opposite ends of the home.
- C. A foster parent shall not use portable space heaters during sleeping hours.
- D. A foster home shall not rely on portable space heaters as the sole source of heat.

**R6-5-5846. Emergencies, Exits, and Evacuation**

- A. A foster parent shall have a plan for emergency evacuation of the foster home.
- B. All household members and persons who care for a foster child in the foster home shall be knowledgeable about the emergency and evacuation plans and procedures.
- C. Within 48 hours after a foster child is placed in a foster home, a foster parent shall give the foster child a developmentally appropriate explanation of the emergency and evacuation plan, and ensure that the foster child can follow the plan in the event of a fire or emergency.
- D. A foster home shall have the following exits:
1. On each floor used by a foster child, 2 exits which are remote from one another;
  2. On each floor, at least 1 exit with a direct, unobstructed and safe means of travel to the outdoors, and a safe method to reach street or ground level;
  3. A window serving as a second exit only if:
    - a. It is accessible to children and care-givers;
    - b. It can be readily opened; and
    - c. It is of a size and design to permit a child or care-giver to pass through it; and
  4. On windows with security bars or devices, an emergency release mechanism maintained in good repair.

**R6-5-5847. Special Provisions for a Receiving Foster Home**

A foster parent who operates a receiving foster home shall comply with all foster home requirements, in addition to the following:

1. A receiving foster parent shall be prepared to accept a foster child, according to the capacity and terms of the foster home license, 24 hours per day, 7 days per week, unless the foster parent has made other arrangements with the placing and licensing agency.
2. A receiving foster parent may simultaneously provide receiving care, family foster care, and respite care so long as the total number of children in the foster home at any 1 time does not exceed the ratios prescribed in R6-5-5826 and the terms of the foster home license.

**R6-5-5848. Special Provisions for a Respite Foster Home**

- A. A foster parent who operates a respite foster home shall comply with all foster home requirements, except as provided in this Section.
1. A respite foster parent may simultaneously provide respite care, family foster care, and receiving care so long

as the total number of children in the foster home at any 1 time does not exceed the ratios prescribed in R6-5-5826 and the terms of the foster home license.

2. A respite foster parent may use sleeper sofas, rollaway beds, couches, cots, and sleeping bags or mats as acceptable sleeping accommodations for a child receiving respite care, provided the respite care does not exceed 6 consecutive days.

- B. A respite foster parent shall request and receive information and instruction from the regular foster home licensee on at least the following:

1. Information and instruction about the specific personal care of a child in respite care;
2. Information and instruction about the provision of medications required by a child in respite care;
3. Behavior management policies and practices and specific instructions for a child in respite care; and
4. Emergency contacts and telephone numbers for a child in respite care.

**R6-5-5849. Special Provisions for an In-home Respite Foster Parent**

- A. A person applying for licensure solely as an in-home respite foster parent shall comply with all foster home requirements except as otherwise provided in this Section.
- B. An in-home respite foster parent applicant shall comply with R6-5-5802 and R6-5-5823 except the applicant is not required to provide the following:
1. Immunization records for each child in the applicant's household as required by R6-5-5802(B)(6) and R6-5-5823(5);
  2. Documentation of sufficient income as required by R6-5-5823(2);
  3. A statement explaining the child care arrangements the applicant would make for a foster child, or the applicant's own children, during the applicant's working hours as required by R-6-5802(B)(10);
  4. A statement explaining how activities related to a business activity will not interfere with the care of a foster child as required by R6-5-5802(B)(11);
  5. A description of the applicant's home and neighborhood as required by R6-5-5802(B)(16);
  6. A statement authorizing the licensing agency or the Licensing Authority to arrange for DHS to conduct a health and safety inspection of the applicant's home as required by R6-5-5802(B)(23)(c).
  7. Household members are not required to submit to fingerprinting or a criminal history check as required by R6-5-5802(C) and R6-5-5823(3).
- C. The following rules do not apply to a person seeking licensure solely as an in-home respite foster parent:
1. R6-5-5827. Placement Agreements;
  2. R6-5-5828. Participation in Case Planning, unless requested to do so;
  3. R6-5-5830. Medical and Dental Care;
  4. R6-5-5834. Notification of Foster Child Death, Illness, Accident, Unauthorized Absence, or Other Unusual Events, subsections (B)(3) and (4), unless the change or event directly affects the licensee's ability to provide respite care and comply with these rules;
  5. R6-5-5835. Notification of Events or Changes Involving the Foster Family or the Foster Home, subsection (A),

**Notices of Final Rulemaking**

unless the change or event directly affects the licensee's ability to provide respite care and comply with these rules, and subsection (B), except a fire or emergency requiring evacuation of the foster home;

6. R6-5-5836. Maintenance of a Foster Child's Records, except to document any behavioral incidents, medical care, provision of medication, and any other event or service required by the case plan or which may be requested by the regular foster parent while the in-home respite foster parent has responsibility for the foster child in care;
7. R6-5-5838. Foster Home: General Requirements;
8. R6-5-5839. Foster Home: General Safety Measures;
9. R6-5-5840. Exterior Environment; Play Area; Play Equipment
10. R6-5-5841. Swimming Pools, subsections (A) and (B);
11. R6-5-5842. Bedrooms; Bedding; Sleeping Arrangements;
12. R6-5-5843. Bathrooms;
13. R6-5-5844. Kitchen;
14. R6-5-5845. Fire Safety and Prevention, subsections (A) and (B); and
15. R6-5-5846. Emergencies, Exits, and Evacuation, subsections (A), (C), and (D).

D. An in-home respite foster parent shall request and receive information and instruction from the regular foster home licensee on at least the following:

1. The behavior management policies and practices of the home as required by R5-5-5833 and specific instructions which apply to a child in respite care;
2. Household policies and practices for emergency situations;
3. Routine household management practices which will provide for continuity in operation of the foster home for the comfort and support of a foster child in care.

E. An in-home foster parent shall not permit any unlicensed person to accompany or assist the in-home foster parent while providing respite care.

**R6-5-5850. Special Provisions for a Professional Foster Home**

A. A professional foster home shall comply with all foster home requirements except as otherwise provided in this Section.

B. A professional foster parent applicant shall provide to the licensing agency or the Licensing Authority documentation or demonstration of:

1. Verified, successful foster parenting experience; or
2. Verified experience working with or the ability to care for special care children.

C. A professional foster parent shall complete the following training:

1. At least 12 clock hours of pre-service training and 6 clock hours of ongoing training in addition to the requirements of R6-5-5825(A) and (B);
2. Training in cardiopulmonary resuscitation (CPR) and first aid; and
3. Pre-service training related to the type of care and services required by a child to be placed into the professional foster parent's care, which may include the

following:

- a. Training in de-escalation;
- b. Training in physical restraint practices, as needed; and
- c. Training in medical and health care issues, procedures, and techniques including:
  - i. The purpose, use, and administration of medications;
  - ii. Medication interactions; and
  - iii. Potential medication reactions.

D. Notwithstanding any other provisions of this Article, a professional foster home is subject to the licensing limitations in this subsection.

1. A professional foster home shall have no more than 2 special care foster children.
2. The licensing agency may recommend an exception to allow the professional foster parent to care for up to 5 special care foster children when the foster parent has demonstrated the ability to provide care for more than 2 special care children.

3. In deciding whether to recommend increased capacity as allowed by subsection (D)(2), the licensing agency shall assess:

- a. The professional foster parent's motivation for fostering more than 2 special care children;
- b. Any CPS reports involving the professional foster parent; and
- c. Whether the professional foster parent has demonstrated:
  - i. Verified, successful professional foster parenting experience with 2 special care children;
  - ii. A minimum of 1 year of verified, successful work experience with special care children; or
  - iii. Verified specialized skills and training in the care of special care children.

4. The Licensing Authority shall evaluate the recommendation and determine whether to approve the exception.

E. Except when temporarily replaced by an approved alternative care provider, a professional foster parent shall serve as the foster child's primary caregiver and be available to provide direct physical and specialized professional services as required in the foster child's case plan.

F. A professional foster parent shall use best efforts to participate as a member of the service team as prescribed in R6-5-5828(B), through at least 1 of the following methods:

1. Personal attendance at team meetings,
2. Telephonic conference calls,
3. Provision of a written report on a foster child's progress and problems including any recommendations for service.

G. A professional foster parent shall maintain at least a weekly record of a special care child's progress and problems, unless more frequent documentation is required, in addition to maintaining the records required by R6-5-5836.

H. Within the license renewal application, a professional foster parent shall include evidence of current CPR and first aid certification.

NOTICE OF FINAL RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 10. DEPARTMENT OF ECONOMIC SECURITY  
THE JOB OPPORTUNITIES AND BASIC SKILLS (JOBS) PROGRAM

PREAMBLE

1. **Sections Affected**  
R6-10-201
- Rulemaking Action**  
Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statutes: A.R.S. §§ 41-1954(A)(3) and 46-134(12)  
Implementing statutes: A.R.S. §§ 41-2026 and 41-2027; Laws 1994, Ch. 301, §§ 2-19
3. **The effective date of the rules:**  
January 10, 1997
4. **A list of all previous notices appearing in the Register, addressing the final rule:**  
**Notice of Rulemaking Docket Opening:**  
2 A.A.R. 1223, March 15, 1996  
**Notice of Proposed Rulemaking:**  
2 A.A.R. 3355, July 12, 1996
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Vista Thompson Brown, Legal Analyst  
Address: Department of Economic Security  
P.O. Box 6123, Site Code 837A  
Phoenix, Arizona 85005  
Telephone: (602) 542-6555  
Facsimile: (602) 542-6000
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**  
Laws 1994, Ch. 302, §§ 2-19 (the JOBSTART Bill) requires the Department of Economic Security to establish a "full employment demonstration project" as part of a comprehensive welfare reform program. The JOBSTART demonstration project is operating in Pinal County in the cities of Eloy, Coolidge, and Casa Grande. JOBSTART allows individuals receiving AFDC and food stamps to work for public or private sector employers for minimum wage or above. The Department uses the recipients' AFDC and food stamp benefits to partially reimburse employers for wages paid to the employed recipients. The project is designed to determine the effects of diverting AFDC and food stamp benefits to project participants to employers who will pay project participants wages, and to evaluate whether such a program will lead to self-sufficiency and elimination of welfare dependency.  
  
This proposed amendment to the JOBSTART rules expands the geographic scope of the demonstration project to include sites in Mesa, Arizona. The expansion is essential to ensure sufficient participants for evaluation purposes.
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**  
Not applicable.
8. **The summary of the economic, small business and consumer impact:**  
In addition to the 3 original communities within Pinal County, the Mesa area has been targeted for project expansion based on the size of its population. This expansion will provide a sufficient number of participants for project evaluation.  
  
The proposed amendment to the JOBSTART rules will impact recipients of both AFDC and food stamps who live in the project expansion area. These recipients will be placed in subsidized employment and will benefit from the acquisition of skills, training, and expanded employment opportunities.  
  
Employers who participate in the project will benefit from the larger employee pool and the lower wage and operating expenses resulting from the wage subsidies.  
  
Taxpayers will benefit from the project due to the ultimate decrease in paid welfare benefits. There will be little or no increase in cost to taxpayers because monies otherwise paid in welfare benefits are used to reimburse employers who hire project participants.  
  
Within the Department of Economic Security, both the JOBS Administration and the Family Assistance Administration (FAA) incur costs to implement and enforce the JOBSTART program. The Department will incur some additional costs to train staff in offices slated for expansion of JOBSTART. However, there will be no significant costs to implement the proposed expansion.

Notices of Final Rulemaking

9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):  
The Department made no changes.
10. A summary of the principal comments and the agency response to them:  
The Department received no comments from the public.
11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
Not applicable.
12. Incorporations by reference and their location in the rules:  
None.
13. Was this rule previously adopted as an emergency rule?  
No.
14. The full text of the rules follows:

TITLE 6. ECONOMIC SECURITY

CHAPTER 10. DEPARTMENT OF ECONOMIC SECURITY

THE JOB OPPORTUNITIES AND BASIC SKILLS (JOBS) PROGRAM

ARTICLE 2. JOBSTART

Section  
R6-10-201. Definitions

ARTICLE 2. JOBSTART

R6-10-201. Definitions

In addition to the definitions contained in R6-10-101 and A.A.C. R6-12-1302, the following definitions apply in this Article ~~unless the context otherwise requires.~~

1. No change.
2. "Designated geographic area" means the following towns and zip code areas: Coolidge, 85228; Eloy, 85231; and

Casa Grande, 85222, 85223, 85230; and Mesa, 85201, 85202, 85203, 85204, 85205, 85206, 85207, 85208, 85210, 85211, 85213, 85215, 85224, 85225, 85226, 85227, 85234, 85236, 85240, 85242, 85244, 85248, 85249, 85251, 85252, 85257, 85264, 85269, 85271, 85281, 85282, 85283, 85284, and 85287.

3. No change.
4. No change.
5. No change.
6. No change.
7. No change.
8. No change.



## Notices of Final Rulemaking

## NOTICE OF FINAL RULEMAKING

## TITLE 11. MINES

## CHAPTER 2. STATE MINE INSPECTOR

## MINED LAND RECLAMATION

## PREAMBLE

### 1. Sections Affected

Article 1  
R11-2-101  
Article 2  
R11-2-201  
R11-2-202  
R11-2-203  
R11-2-204  
R11-2-205  
R11-2-206  
R11-2-207  
Article 3  
R11-2-301  
R11-2-302  
Article 4  
R11-2-401  
R11-2-402  
Article 5  
R11-2-501  
R11-2-502  
R11-2-503  
R11-2-504  
Article 6  
R11-2-601  
R11-2-602  
R11-2-603  
Article 7  
R11-2-701  
R11-2-702  
R11-2-703  
R11-2-704  
R11-2-705  
Article 8  
R11-2-801  
R11-2-802  
R11-2-803  
R11-2-804  
R11-2-805  
R11-2-806  
R11-2-807  
R11-2-808  
R11-2-809  
R11-2-810  
R11-2-811  
R11-2-812  
R11-2-813  
R11-2-814  
R11-2-815  
R11-2-816  
R11-2-817  
R11-2-818  
R11-2-819  
R11-2-820  
R11-2-821  
R11-2-822

### Rulemaking Action

[illegible]



**Notices of Final Rulemaking**

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 27-904

Implementing statutes: A.R.S. §§ 27-901 through 27-1026

3. **The effective date of the rules:**

January 6, 1997

4. **A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening:

2 A.A.R. 974, February 16, 1996

Notice of Proposed Rulemaking:

2 A.A.R. 1001, February 23, 1996

5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Audrey Akhavan and Paul Catanzariti

Address: State Mine Inspector  
1700 West Washington, Suite 400  
Phoenix, Arizona 85007

Telephone: (602) 542-5971

Fax Number: (602) 542-5335

6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

Articles 1 through 8 implement the Mined Land Reclamation statutes codified as A.R.S. §§ 27-901 through 27-1026. The Proposed Mined Land Reclamation rules implement the program mandated by the Mined Land Reclamation Act and apply to exploration operations and metalliferous mining units creating surface disturbances greater than 5 acres on private land.

Many of the procedural and substantive details of the Mined Land Reclamation Program are included in the Arizona Mined Land Reclamation Act (SB 1365 and SB 1380). The majority of the proposed rules serve to fill minor statutory gaps and refine requirements contained in the Act.

The agency's reason for initiating the rule stems from a legislative mandate (A.R.S. § 27-904) that the State Mine Inspector adopt rules consistent with the Mined Land Reclamation Act.

In compliance with A.R.S. §§ 27-902(B) and (C), throughout the rule-development process, this Agency has made every effort to avoid duplication of provisions that regulate exploration operations and mining units to protect public health and the environment and to draft reclamation plan requirements which are not redundant, inconsistent, or contradictory to closure plan requirements set forth in Title 27, Chapter 2, Article 3.

Further, this Agency has established an Inter-Agency Coordination Group composed of representatives of state and federal agencies involved in regulating the reclamation and closure activities of mining units and exploration operations within the state of Arizona; mining professionals; environmental consultants; and the Assistant Attorneys General representing this Agency. The objectives of this group are to develop a uniform protocol for the inter-agency coordination of reclamation plan and financial assurance review and approval; to determine how lead agencies will be designated; and to develop a generic "but modifiable" memoranda of

understanding to be used when required by overlapping jurisdiction. The activities related to this goal demonstrate the Agency's intent to comply with A.R.S. § 27-932.

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

8. **The summary of the economic, small business, and consumer impact statement:**

The Arizona Mined Land Reclamation Act was passed in 1994 and is the enabling legislation for the Mined Land Reclamation Rules. The Act names the State Mine Inspector as the agency to develop and adopt Mined Land Reclamation Rules pursuant to the Act. The Division of Mined Land Reclamation established within the Office of the State Mine Inspector began the regulatory rule drafting process in March 1994. Outside parties were invited and did participate in the rule drafting, editing, and revising process.

Persons who will be most directly affected by, and bear the primary costs of, the new reclamation rules are the owners and operators of exploration projects and mining units on private land within the state of Arizona.

Those receiving the most direct and substantial economic benefit from the proposed rules will be equipment suppliers, vendors, consultants, engineers, and other providers of goods and services associated with reclamation planning and execution.

Financial institutions will realize a diverse and largely indirect variety of effects. Political subdivisions and taxing authorities, including state, county, municipal, school district, and other local government units, will realize a combination of costs and benefits associated with the new rules.

**Arizona Administrative Register**  
**Notices of Final Rulemaking**

The proposed rules may affect utilities and power suppliers if mining companies reduce energy consumption to offset the higher expected costs of reclamation.

Private persons will be affected in various ways by the proposed rules. Employees of exploration and mining companies affected by the rules may be at risk of unemployment as a result of reduced company profitability associated with additional costs for reclamation. Shareholders of the 4 major companies involved in copper exploration and mining activities may suffer a loss in share value as a result of lower expected future capital appreciation and dividend flow.

Offsetting these costs, individuals and employees of businesses involved in the planning and execution of reclamation activities will benefit from increased opportunities for employment.

Downstream users of commodities produced by mining operations may be adversely affected as a result of a reduction in availability of those commodities. The users most directly affected include copper wire drawing facilities, brass mills, and foundries.

Finally, the Mined Land Reclamation Program itself and the Office of the State Mine Inspector (the agency designated to administer the Mined Land Reclamation Program) will be adversely affected by legislative underfunding of the program.

Estimated program expenditures exceed the legislative allocation. After Fiscal Year 1996-1997 funding has been exhausted, the agency will continue to incur costs for reclamation personnel, offices, travel, surveying, equipment and supplies, and professional services associated with the responsibilities of program administration.

**9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

The text of the final rule differs from that of the proposed rule in grammar, structure, and organization. Grammatical changes were made to enhance the clarity, conciseness, brevity, and understandability of the rule. Other changes in the structure and organization of the rule and the reasons for those changes are shown below. None of the changes makes the final rule substantially different from the proposed rule. The persons affected by the final rule, and the rule's subject matter are the same as those of the proposed rule.

Proposed "R11-2-101. Definitions:" The introductory sentence has been redrafted to use the sentence structure most often used to introduce definitions.

Numbering of the definitions in this Section has been deleted, as permitted by A.A.C. R1-1-408(G). This change will make future amendments to definitions easier, as they will not have to be renumbered.

The proposed definition for "Innovative reclamation" has been deleted. The statute which uses the term, A.R.S. § 27-931(B), allows the State Mine Inspector to approve innovative reclamation or other proposed methods, but only after a public hearing and a showing that the innovative or other proposed methods can be reasonably expected to support the approved post-mining land use. It has been determined that the statutory requirements establish a satisfactory standard for "innovative reclamation" and preclude the need to define the term.

The proposed definition for "Operator" has been revised to ensure that anyone submitting documentation to the State Mine Inspector as an "operator" will have the legal authority to do so.

The proposed definition for "Person of authority" has been deleted as the Section in which the term was used, proposed R11-2-211(B) (final subsection R11-2-201(B)), has been redrafted and the definition is no longer necessary.

The proposed definition for "Showing of good cause" has been redrafted for clarity and to provide an objective standard for enforcement.

The definition for "Substantial change" has been deleted. A.R.S. § 27-927(D) lists changes that are *not* substantial as defenses to a substantial change determination, requiring a reading that all changes that are not listed *are* substantial. The proposed definition for

"Substantial change" listed only 3 criteria for determination of a substantial change, which limited the statute. Agencies are not authorized to limit statute by rule.

Proposed "R11-2-202. Site-Specific Circumstances" has been deleted as it reiterated A.R.S. §§ 27-922(D) and 27-973(B).

Proposed "R11-2-211. Document Submittals" has been redrafted to clarify signatory authority and to include additional documents. This Section has been more appropriately moved to the beginning of the General Regulatory Provisions article which addresses process in dealing with the Agency. The document submittals Section has been moved to the beginning of this article as final "R11-2-201" because owners and operators regulated by the Act and Rules will begin interacting with the Agency at the time documents are submitted.

Proposed "R11-2-207. Preservation of Documents" has been renumbered as final "R11-2-202" and redrafted. A statutory amendment under SB 1380 changed the effective date of the Mined Land Reclamation Rules from July 1, 1996, to October 1, 1996; however, the effective date of the rule is not needed and has been deleted. This Section has also been redrafted for clarity, and to limit the requirement that owners or operators retain copies of "each annual status report" to only "the most recent annual status report."

Proposed "R11-2-201. Extension of Time for Submittal of Plan" has been renumbered as final "R11-2-203" and redrafted for clarity and to reflect the language added to implement A.R.S. § 27-922(B), which sets forth a sufficient standard for an extension request.

Proposed "R11-2-203. Superseded by Federal Agency" has been renumbered and more appropriately retitled as final "R11-2-204."

Supersedure by Federal Plan." This Section has been redrafted to clarify the supersedure process and to specify what the owner or operator is required to provide the State Mine Inspector with in order for a request for supersedure to be acted upon.

Proposed "R11-2-205. Public Viewpoints at Open Pits" has been deleted. This Section was determined to be an invalid rule.

Proposed "R11-2-206. Structures and Equipment "Public Safety" has been deleted from Article 2, General Regulatory Provisions, and more appropriately redrafted and incorporated under final Article 4, Exploration Operation Reclamation Standards, in final "R11-2-401. Restricted Access" and under final Article 6, Mining Unit Reclamation Standards, in final "R11-2-601. Public Safety Standards." This change was made because the General Regulatory Provisions article deals with process for all owners and operators and this Section dealt with operations covered in specific articles devoted to mining and exploration standards.

Proposed "R11-2-208. Variance" has been renumbered as final "R11-2-206", redrafted for clarity, and now includes a cross-reference to the relevant statute (A.R.S. § 27-931). Proposed subsections R11-2-208(A)(1) and R11-2-208(A)(2) have been deleted in this Section and incorporated in final R11-2-201. Document Submittals. Proposed subsection R11-2-208(B) has been deleted as it allowed the State Mine Inspector to have complete discretion over the information requirements for a variance request, but left the owner or operator lacking sufficient notice as to what will be required.

Proposed "R11-2-209. Unanticipated Conditions." The Agency has terminated rulemaking on this proposed Section. After consulting with the Attorney General's Office, the Agency determined there is no statutory authority for the proposed Section. The State Mine Inspector may initiate an amendment to the Act during the next Legislative Session that will incorporate the language of the terminated Section.

Proposed "R11-2-210. Cessation of Mining Activity" has been renumbered as final "R11-2-207" and redrafted for clarity.

Proposed "R11-2-211. Document Submittals" has been redrafted to clarify signatory authority and to include additional documents. This Section has been more appropriately moved to the beginning of the General Regulatory Provisions article which addresses process in dealing with the Agency. The document submittals Section has been moved to the beginning of this article as final "R11-2-201" because owners and operators regulated by the Act and Rules will begin interacting with the Agency at the time documents are submitted.

Proposed "R11-2-212. Inspectors" has been deleted. This Section was inappropriate and not authorized by the Mined Land Reclamation statutes. "Inspectors" are specifically governed by A.R.S. § 27-902(A), and generally under A.R.S. § 38-461.

Proposed "R11-2-213. Civil Penalties" has been deleted. This Section was inappropriate and not authorized by the Mined Land Reclamation statutes. A.R.S. §§ 35-141 and 35-142 provide that all monies paid to the state go into the State General Fund.

Proposed "R11-2-301. Contents of the Exploration Operation Reclamation Plan" has been more appropriately retitled for consistency as final "R11-2-301. Exploration Operation Reclamation Plan Content."

Proposed subsection (A) of "R11-2-302. Annual Renewal and Status Report" has been redrafted to clarify that annual renewal is required pursuant to A.R.S. § 27-955 and more appropriately retitled as "Annual Renewal." A new subsection, R11-2-302(C), has been added to allow a default annual renewal of an approved exploration operation reclamation plan should the State Mine Inspector fail to respond to an owner's or operator's request for annual renewal within a specific time period.

Proposed "R11-2-303. Revegetation" has been deleted in final Article 3, Exploration Operation Reclamation Plan, and more appropriately redrafted in final Article 7, Revegetation and Soil Standards, as final "R11-2-701. Revegetation Provisions." This change eliminates identical rules in final Article 3, Exploration Operation Reclamation Plan, and final Article 4, Mining Unit Reclamation Plan.

Proposed "R11-2-304. Compliance with Approved Exploration Operation Reclamation Plan" has been deleted as A.R.S. § 27-1022 (Compliance Orders) more effectively addresses compliance with the Act, Rules, and conditions of an approved reclamation plan.

Proposed "Article 4, Exploration Operation Standards," has been more appropriately retitled as final "Article 4, Exploration Operation Reclamation Standards." As proposed, this article title was misleading, and could have been interpreted as regulating *all* exploration operation standards, not just those pertaining to reclamation.

Proposed "R11-2-402. Disposal of Trash" has been more appropriately renamed as "Trash Removal" after being redrafted to clarify ambiguous language and to provide a standard which is more readily enforceable by the State Mine Inspector.

Proposed subsection (B) of "R11-2-501. Mining Unit Reclamation Plan Content" has been slightly redrafted for clarity and to include a cross-reference to A.R.S. § 27-971(B)(8) which clarifies the subsection's consistency with the statute.

Proposed "R11-2-502. Life of Approved Reclamation Plan" has been redrafted to more appropriately address the inclusion of approved substantial changes, and to clarify misleading language.

Proposed "R11-2-503. Post-Mining Land Use" has been more appropriately retitled as final "R11-2-503. Multiple Post-Mining Land Uses."

Proposed "R11-2-505. Revegetation" has been deleted in final Article 5, Mining Unit Reclamation Plan, and more appropriately redrafted in final Article 7, Revegetation and Soil Standards, as final "R11-2-701. Revegetation Provisions." This change eliminates identical rules in final Article 3, Exploration Operation Reclamation Plan, and final Article 4, Mining Unit Reclamation Plan.

**Arizona Administrative Register**  
**Notices of Final Rulemaking**

Proposed "R11-2-506. Compliance with Approved Mining Unit Reclamation Plan" has been deleted as compliance with the Act, Rules, and any condition of an approved reclamation plan is more effectively addressed in Article 6 of the Act (Enforcement); specifically A.R.S. § 27-1022.

Proposed "Article 6, Mining Unit Standards," has been more appropriately retitled as final "Article 6, Mining Unit Reclamation Standards." As proposed, this article title was misleading, and could have been interpreted as regulating *all* mining unit standards, not just those pertaining to reclamation.

Proposed "R11-2-601. Public Safety" has been more appropriately retitled as final "R11-2-601. Public Safety Standards." This Section has also been slightly redrafted for clarity and to provide a more enforceable standard.

Proposed "Article 7, Revegetation," and proposed "Article 8, Soil," have been more appropriately combined in 1 article, titled "Article 7, Revegetation and Soil Standards."

Proposed "R11-2-701. Revegetation" has been more appropriately retitled as final "R11-2-701. Revegetation Provisions."

Proposed subsection "R11-2-701(A)" has been deleted. The requirement that revegetation be accomplished in a manner consistent with an approved reclamation plan is a compliance issue more effectively addressed in Article 6 of the Act (Enforcement); specifically A.R.S. § 27-1022.

Final "R11-2-701. Revegetation Provisions" combines proposed "R11-2-303" and proposed "R11-2-505." This change eliminates identical rules.

Proposed "R11-2-801. Soil Criteria" has been moved to final Article 7, Revegetation and Soil Standards, renumbered, and retitled as final "R11-2-703. Soil Conservation."

Proposed subsection "R11-2-801(A)" has been deleted. The Agency, in consultation with the Attorney General's Office, determined that the language of A.R.S. § 27-974 was ambiguous and could not be clarified through rule.

Proposed subsection "R11-2-801(B)" was redrafted for clarity and consistency with the statute (A.R.S. § 27-974) in final "R11-2-703," and more appropriately titled, "Soil Conservation."

Proposed "R11-2-802. Redistribution of Soil" has been more appropriately moved to final Article 7, Revegetation and Soil Standards, and renumbered as final "R11-2-704."

Proposed "R11-2-803. Off-Site Soil" has been more appropriately moved to final Article 7, Revegetation and Soil Standards, and renumbered as final "R11-2-705."

Proposed "Article 9, Financial Assurance" has been renumbered as final "Article 8."

Proposed "R11-2-901. Definitions" has been renumbered as final "R11-2-801." The introductory sentence has been redrafted for clarity because "Generally Accepted Accounting Principles" could be interpreted as a book title, but is not. The change is consistent with language found in 40 CFR 264.143. Numbering in this definitions Section has also been deleted, as permitted by A.A.C. R1-1-408(G).

The definition for "estimated future reclamation costs" has been deleted. Occurrences of this phrase in the Financial Assurance article were redrafted as "costs estimated in the approved reclamation plan for reclamation" and the definition was no longer needed.

Proposed "R11-2-902. Applicability" has been deleted. This Section had, in part, reiterated A.R.S. § 27-991(A). The remaining language in this Section was determined to be inconsistent with A.R.S. § 27-922(D) and allowed wholly subjective reclamation standards to be applied to surface disturbances reclaimed prior to the effective date of the Act and Final Rulemaking.

Proposed "R11-2-903. Amount of Financial Assurance" has been renumbered as final "R11-2-802."

Proposed subsections "R11-2-903(E)" and "R11-2-903(F)" were found to be inconsistent with A.R.S. § 27-992(B) and have been deleted.

Proposed subsection "R11-2-903(G)" has been renumbered as "R11-2-802(E)" and has been redrafted for clarity and consistency with A.R.S. § 27-992(B).

Proposed "R11-2-904. Blanket Performance Bond" has been renumbered and more appropriately retitled as final "R11-2-803. Blanket Financial Assurance." This Section has also been redrafted for clarity and to assure that a single financial assurance mechanism covering more than 1 mining unit or facility will be sufficient to cover the aggregate costs for reclamation. A new final subsection, R11-2-803(B) has been added to provide a cross-reference to the statute and ensure consistency with the statute which allows a state-wide financial assurance mechanism for an owner's or operator's exploration operations (A.R.S. § 27-933).

Proposed "R11-2-905. Statewide Financial Assurance for Exploration Operations" has been deleted as it reiterated A.R.S. § 27-993(B).

Proposed "R11-2-906. Financial Assurance Mechanisms" has been redrafted. This Section was too long and did not comply with the Secretary of State's rule, A.A.C. R1-1-408(F), which limits subsections to 4 levels. The proposed Section heading and introductory sentence were deleted. The introductory sentence reiterated A.R.S. § 27-991(B), and the Section heading was no longer needed after redrafting. Each proposed financial assurance mechanism second-level subsection has been renumbered as a separate final Section. The introductory statements for each financial assurance mechanism second-level subsection have been deleted as

they reiterated A.R.S. § 27-991(B).

Proposed subsection "R11-2-906(A)(1)" has been renumbered and titled as final "R11-2-804. Surety Bonds." The proposed subsection had been written as a definition. In the final Section, it has been redrafted to be consistent with the language used in other final financial assurance mechanism sections.

Proposed subsection "R11-2-906(A)(2)" has been renumbered and titled as final "R11-2-805. Certificates of Deposit." This final Section has also been redrafted for clarity and more appropriately names the "state of Arizona" as beneficiary.

Proposed subsection "R11-2-906(A)(3)" has been renumbered and titled as final "R11-2-806. Trust Funds." The proposed subsections "R11-2-906(A)(3)(d)," "(e)," and "(f)" were reordered to provide a more logical reading; proposed subsection "R11-2-906(A)(3)(f)" is now final subsection "R11-2-806(D)," proposed subsection "R11-2-906(A)(3)(d)" is now final subsection "R11-2-806(E)," and proposed subsection "R11-2-906(A)(3)(e)" is now final subsection "R11-2-806(F)." Final subsections "R11-2-806(D)" and "R11-2-806(E)" have also been redrafted as the proposed language would have allowed a trust fund to be unfunded in the first year and left pre-existing surface disturbances unaccounted for, which is contrary to the statute.

Proposed subsection "R11-2-906(A)(4)" has been renumbered and titled as final "R11-2-807. Letters of Credit."

Proposed subsection "R11-2-906(A)(5)" has been renumbered and titled as final "R11-2-808. Insurance."

Proposed subsection "R11-2-906(A)(5)(c)" was deleted as it reiterated, in part, a requirement of subsection "R11-2-906(A)(5)(b)," which is final subsection "R11-2-808(B)".

Proposed subsections "R11-2-906(A)(5)(d)" and "R11-2-906(A)(5)(e)" have been redrafted in final "R11-2-808(C)" and "R11-2-808(D)" to make it clear that the policy terms set forth in the rule define language which will be included in an insurance policy provided as a financial assurance mechanism.

Proposed subsection "R11-2-906(A)(6)" has been renumbered and titled as final "R11-2-809. Certificates of Self-Insurance." The parenthetical reference to the definition for "substantial [business] relationship" has been deleted. This final Section has also been slightly redrafted by adding the introductory phrase, "The criteria of this subsection for successful completion of the financial assurance test are;" at final renumbered subsections "R11-2-809(C)" and "R11-2-809(D)."

Proposed subsection "R11-2-906(A)(7)" has been renumbered and titled as final "R11-2-810. Cash Deposits." This final has been redrafted for clarity and more appropriately names the "state of Arizona" as beneficiary.

Proposed subsection "R11-2-906(A)(8)" has been renumbered and titled as final "R11-2-811. Corporate Financial Tests." The introductory statement of this final subsection has been redrafted to correct citations to subsequent subsections which had been transposed in error.

Proposed subsection "R11-2-906(A)(9)" has been renumbered and titled as final "R11-2-812. Annuities." This final Section has also been redrafted for brevity, clarity, and to more appropriately name the "state of Arizona" as beneficiary.

Proposed subsection "R11-2-906(A)(10)" has been deleted as it reiterated A.R.S. § 27-991(B)(10).

Proposed subsection "R11-2-906(B)" has been renumbered and titled as final "R11-2-813. Final Action on Financial Assurance Mechanisms."

Proposed "R11-2-907. Incremental Financial Assurance" has been renumbered as final "R11-2-814."

Proposed "R11-2-908. Provider" has been renumbered and more appropriately retitled as final "R11-2-815. Financial Assurance Funding." The final Section has also been redrafted to clarify that the owner or operator shall provide financial assurance, but funding sources of the financial assurance are at the discretion of the owner or operator, which is more consistent with the statutory use of the terms "provide" and "funded."

Proposed "R11-2-909. Financial Assurance of More than 1 Owner or Operator of a Single Unit" has been renumbered and more appropriately retitled as final "R11-2-816. Limited Individual Financial Assurance for Single Unit."

Proposed "R11-2-910. Application for Release of Financial Assurance" has been renumbered as final "R11-2-817."

Proposed subsections "R11-2-910(A)," "R11-2-910(B)(1)," and "R11-2-910(B)(2)" have been slightly redrafted in final subsections "R11-2-817(A)," "R11-2-817(B)(1)," and "R11-2-817(B)(2)" to be more consistent with the statute.

Proposed subsection "R11-2-910(C)" has been redrafted to include a reference to the Administrative Procedures Act for an appeal of a denial to release financial assurance.

Proposed "R11-2-911. Forfeiture Criteria/Forfeiture of Financial Assurance" has been renumbered as final "R11-2-818."

Proposed "R11-2-912. Notification of Forfeiture Action" has been renumbered as final "R11-2-819" and has been slightly redrafted to include notification of forfeiture action to all principals and sureties along with owners and operators.

Proposed "R11-2-913. Avoidance of Forfeiture" has been renumbered as final "R11-2-820" and has been slightly redrafted to include notification of conditions for avoidance of forfeiture to all principals and sureties along with owners and operators.

Proposed "R11-2-914. Notice of Exercise of Forfeiture." has been renumbered as final "R11-2-821" and has been slightly redrafted to include notice of exercise of forfeiture to owners and operators along with all principals and sureties.

**Arizona Administrative Register**  
**Notices of Final Rulemaking**

Proposed subsection "R11-2-914(B) has been deleted as the right to a hearing has been addressed in final R11-2-819.

Proposed "R11-2-915. Term of Financial Assurance" has been renumbered as final "R11-2-822" and more appropriately retitled as "Full Release of Financial Assurance." This final Section has been redrafted to omit language which was inconsistent with statute, and to omit the language regarding inspection (which partially duplicated final subsection R11-2-817(B)), while preserving the original intent of the proposed Section.

**10. The summary of the principal comments and the agency response to them:**

**Proposed R11-2-101:**

COMMENT: "This Section should also include definitions for metalliferous mining units and private lands (i.e., private surface and minerals, private minerals/federal surface, federal minerals/private surface, etc.)."

RESPONSE: The terms "mineral" and "mining facility" are defined in A.R.S. § 27-901. The Mined Land Reclamation statutes and rules apply only to surface disturbances on private lands. Mineral rights and ownership are not applicable and do not need to be defined in rule. The recommendation was not incorporated in final R11-2-101.

**Proposed R11-2-201:**

COMMENT: "This Section states that a request for an extension of time up to 90 days to submit a reclamation plan for existing operations and existing mining units. We assume this means 90 days from the implementation of the regulations. If so, it should be stated, or if other, when the 90-day timeframe begins."

RESPONSE: Under A.R.S. § 27-922(A), as amended, reclamation plans for existing exploration operations and mining units shall be submitted by April 1, 1997. Under A.R.S. § 27-921, as amended, new exploration operations and mining units cannot create a surface disturbance greater than 5 acres until a reclamation plan and financial assurance mechanism is approved or otherwise authorized by the Act. Although this Section has been redrafted for clarity in final R11-2-203, reiterating the plan submittal date for existing exploration operation and mining units referenced in statute is unnecessary, and no date can be defined for new exploration operations and mining units that are not yet regulated by the Mined Land Reclamation Act and Rules.

**Proposed R11-2-203:**

COMMENT: "We do not understand the intent of this Section. What are the consequences of the State Mine Inspector's denial of the request for determination." Currently, in the absence of a memorandum of understanding, the new rules would not apply to operations on federal lands. Assuming a memorandum of understanding is in place, is it the intent of the rules to cause the operator to upgrade the reclamation and financial assurance requirements to be consistent with the Act. "This Section needs some explanation."

RESPONSE: The Mined Land Reclamation Act and Rules do not apply to federal lands. However, there will be circumstances in which reclamation plan and financial assurance requirements, as well as agency jurisdictions, overlap. For these reasons, under A.R.S. § 27-903(B), the State Mine Inspector may enter into agreements to coordinate the review and approval of reclamation plans and "shall avoid redundant, inconsistent, or contradictory reclamation, inspection, administration, enforcement, and financial assurance requirements." The proposed Section has been redrafted to clarify the process of supersedure by a federal reclamation plan in final R11-2-204.

**Proposed R11-2-207:**

COMMENT: "We do not believe that it is necessary for the owner or operator to maintain a copy of all past annual status reports. This requirement not only would be burdensome, but it also ignores the fact that the decision to maintain copies of past annual status reports should be subject to the sole discretion of the owner or operator. In essence, we believe that if such reports must be maintained, the appropriate party for maintaining the reports is the State Mine Inspector, since the reports must be annually submitted to the State Mine Inspector's Office for its review."

RESPONSE: The agency agreed with this comment and this Section has been redrafted to include only the "most recent annual status report" in final R11-2-202.

**Proposed R11-2-208(C):**

COMMENT: "This Section states that the SMI shall respond to a request for a variance within 30 days. Is the word 'respond' in this Section synonymous with 'approval' of the request?" This Section only discusses SMI responsibilities if approved. What are the responsibilities of the SMI if the request is denied?"

RESPONSE: The agency agreed with the comment and redrafted this subsection in final subsection R11-2-206(B) to include responsibilities of the State Mine Inspector if a request for a variance is denied.

**Proposed R11-2-209(B):**

COMMENT: "We respectfully request that the last sentence in this subsection be deleted. The mining industry is closely tied to market conditions. Accordingly, the decision of whether to reclaim a particular area of a mine often depends on whether future economic conditions may allow for future mining or beneficiation activities in such an area. An unanticipated change in metal prices or other similar circumstances could therefore result in the need to depart from an approved reclamation plan both in terms of proposed reclamation measures and proposed surface disturbances. Any concern that such a departure would be inconsistent with the Mined Land Reclamation Act and the mined land reclamation rules is tempered by the requirement in R11-2-209(A)(3)

**Arizona Administrative Register**  
**Notices of Final Rulemaking**

that any operational or reclamation activity conducted as a result of an unanticipated condition must be consistent with the Act and the mined land reclamation rules."

RESPONSE: It was the Agency's intent to include any unforeseen physical or chemical conditions as a defense to departing from an approved reclamation plan. (In the event that an unforeseen *economic* consideration results in a need to depart from an approved reclamation plan, the reclamation plan can be amended under A.R.S. § 27-927.) However, after consultation with the Attorney General's Office, it was determined there is no statutory authority for this Section.

**Proposed R11-2-210(A)(2):**

COMMENT: "This Section includes a dual condition. No activity from 1 annual notification to the next and a no-staffed office on the site. Many sites on public land have no mining activity but have occupants who could claim to be staff. This may encourage trespass occupancy on public lands."

RESPONSE: The Mined Land Reclamation Act and Rules apply only to private lands. Although redrafted for clarity, final subsection R11-2-207(A)(2) retains the dual condition as a criteria for cessation of mining.

**Proposed R11-2-210(A)(3):**

COMMENT: "We respectfully request that the phrase "requested or" be inserted before the word "granted" in line 4. This added language will clarify that cessation of mining has not occurred if a request for an extension has been submitted to the State Mine Inspector under R11-2-205, and the State Mine Inspector has not yet either approved or denied the request."

RESPONSE: Adding the suggested language would weaken the word "granted" and could allow multiple, successive requests for extensions to be submitted, thereby extending the time frame established under A.R.S. § 27-926. The suggestion was not incorporated in final R11-2-207(A)(3).

**Proposed R11-2-210(A)(4):**

COMMENT: "This Section should be just 'abandoned' rather than dealing with 2 types."

RESPONSE: "Permanently abandoned mines" and "temporarily abandoned mines" are federal Mine Safety and Health Administration classifications. Although redrafted to require a written determination by the State Mine Inspector, the suggestion was not incorporated in final R11-2-207(A)(4).

**Proposed R11-2-301(A):**

COMMENT: "It would be beneficial to include the requirements found in A.R.S. § 27-951(A). This would eliminate the need to cross reference to the Act or have both documents on hand when preparing a reclamation plan. Additionally, the rules should require the applicant to specify coordinates. Without this information, you could never be sure of locations on the ground."

RESPONSE: Ultimately, the agency will produce guidance documents that will eliminate the need to cross-reference statute and rule. However, quoting, paraphrasing, or reiterating statute in rule is viewed as redundant and unnecessary.

Specifically identifying an exploration operation's location with survey coordinates would compromise the owner's or operator's competitive position. The final subsection was redrafted to replace the word "applicant" with the words "owner or operator," however, the suggestion was not incorporated in final subsection R11-2-301(A).

**Proposed R11-2-302(A):**

COMMENT: "We believe that the last 2 sentences in this subsection should be revised as follows: 'The State Mine Inspector shall renew the approved reclamation plan, INCLUDING ANY MODIFICATIONS, if the modifications are consistent with the criteria of the Act and Article 4 of this Chapter. If the RENEWAL INCLUDES modifications THAT...' These suggested revisions will clarify that the annual renewal extends not only to the approved reclamation plan, but also to any modifications thereto. The suggested revisions also will appropriately modify and define the term 'modifications' as used in the 3rd sentence of this subsection."

RESPONSE: The Agency agreed with the comment. The final subsection, R11-2-302(A), was redrafted to incorporate the recommendations; to ensure the subsection is consistent with A.R.S. § 27-955; and to allow a default annual renewal should the State Mine Inspector fail to respond to an exploration operation annual renewal within a specified period of time.

**Proposed R11-2-303:**

COMMENT: "This Section should specify when revegetation is successful, i.e., a certain percentage of vegetative cover, successful growth over a period of years, etc. Also, some mention of stockpiling topsoil/growth medium would be appropriate here. Additionally, this Section states, 'If revegetation is included in the proposed reclamation plan....' If no revegetation is required, it should be justified in the reclamation plan."

RESPONSE: The criteria for successful revegetation are listed in A.R.S. § 27-992(C). Although the exploration operation and mining unit revegetation sections were redrafted for clarity and brevity in final subsection R11-2-701(B), the suggestion was not incorporated.

Stockpiling of soil is addressed in A.R.S. § 27-974 and clarified in final R11-2-703. Soil Conservation.

Reclamation of surface disturbances is plan-driven and site-specific. Justifying why revegetation is *not* required is unnecessary because revegetation is required *only* if it supports the post-mining land use (reference final subsection R11-2-701(E)). The explo-



**Arizona Administrative Register**  
**Notices of Final Rulemaking**

ration operation and mining unit revegetation sections and the revegetation and soil articles have been redrafted and combined in final Article 7.

**Proposed R11-2-303(A)(6):**

COMMENT: "This subsection currently provides that if revegetation is included in the proposed reclamation plan, the reclamation plan must contain a description of 'pest, disease, growth, and management measures, if any.' Because we believe that the term 'management' was intended to modify each of the preceding terms, and was not intended to be a stand-alone requirement, we suggest that this subsection be modified as follows: 'Pest, disease, AND growth, ~~and management~~ measures, if any.'"

RESPONSE: The Agency agreed with the comment and this subsection has been redrafted for clarity in final subsection R11-2-701(B).

**Proposed R11-2-401:**

COMMENT: "This Section should specify the type of fence, i.e., 4-strand barbed wire, chain link, the height of the fence, and specify maintenance responsibilities. Additionally, insert 'but not limited to' between the words 'including' and 'fencing'."

RESPONSE: The type of fencing specified in the proposed reclamation plan is subject to plan approval. If the proposed fencing does not meet the approval criteria specified in A.R.S. §§ 27-953 or 27-973, the plan will not be approved. Adding the language, "but not limited to" is not appropriate as there are no other technically and economically practicable measures to restrict public access to open pits or trenches. Although this Section has been redrafted to provide a more stringent standard, the recommendation was not incorporated in final R11-2-401.

**Proposed R11-2-402:**

COMMENT: "This Section appears to only cover physical hazards. Should have some discussion of chemical hazards or hazardous waste."

RESPONSE: Although this Section was redrafted to provide a more enforceable standard, "disposal" of chemical hazards and hazardous waste are covered by A.R.S. Title 49, Chapter 5. This suggestion was not incorporated in final R11-2-402.

**Proposed R11-2-501:**

COMMENT: "As stated for R11-2-301, the reclamation plan should contain the information contained in the referenced sections of the Act."

RESPONSE: Ultimately, the agency will produce guidance documents that will eliminate the need to cross-reference statute and rule. However, quoting, paraphrasing, or reiterating statute in rule is viewed as redundant and unnecessary. This suggestion was not incorporated in final R11-2-501; however, subsection R11-2-501(B) now includes an additional statutory reference.

COMMENT: "About 50% of the underground mine features in Arizona provide roosting habitat for bats, especially if the site is complex with at least 2 surface openings. Therefore, in support of A.R.S. § 27-971(B)(9)(d), this rule should be expanded to require identification of this type of underground site for bat and other wildlife habitat. Wildlife habitat and public safety concerns can both be met, as required by 27-971(B)(9)(a), by installing approved bat-friendly gates at the mine entrances, instead of permanently plugging or capping. In order to adequately identify sites used by bats, surveys of potential sites should be conducted by qualified and properly permitted biologists during the development of the reclamation plan."

RESPONSE: The Mined Land Reclamation Act and Rules regulate mines on private lands with surface disturbances greater than 5 acres, and do not address underground mines and entrances. Open pits and trenches are not bat habitats and are not plugged or capped. This recommendation was not incorporated in final R11-2-501.

**Proposed R11-2-501(A):**

COMMENT: "This Section discusses post mining uses in reference to reclamation. While economics has to factor into reclamation decisions, the least expensive seeding mixture is not always the best, and is often exotic plants that do not always meet the post mining objectives. Further, seeding with exotics and seed mixtures which are not part of the surrounding plant communities continues/increases fragmentation of natural communities. This is an important conservation biology issue in the U.S. and is 1 of the factors for which mining operations are often criticized. The rules should emphasize, if not require, revegetation with native species which are consistent with the surrounding plant communities and meet the objectives of the post mining management."

RESPONSE: Native vs. non-native revegetation is a hotly contested issue. Both sides (those who support and those who oppose native species for revegetation) present compelling arguments. For the purposes of the Mined Land Reclamation Act and Rules, the species for revegetation must support the post-mining land use and is subject to plan approval. No change was made in final subsection R11-2-501(A).

**Proposed R11-2-501(B)(1):**

COMMENT: "We respectfully request that this subsection be amended as follows: 'The existing, APPROXIMATE post-mining, and APPROXIMATE post-reclamation physical topography.' This suggested change will clarify that the owner or operator need not provide exact post-mining and post-reclamation topography."

RESPONSE: Although the Agency does not expect the maps to indicate the "exact" post-mining and post-reclamation topography, the word "proposed" has been added before the word "post-mining" in final subsection R11-2-501(B)(1).



Notices of Final Rulemaking

**Proposed R11-501(B)(2):**

COMMENT: "The map of the existing or proposed disturbed areas required by this Section should include identification of fish and wildlife habitats as required in A.R.S. § 27-971(B)(8). The term 'natural feature' may not capture or adequately describe fish and wildlife habitats which may be affected by the reclamation plan. Because bat colonies are found in previously disturbed areas (abandoned or inactive underground mines), impacts to this resource could be omitted."

RESPONSE: A.R.S. § 27-971(B)(8) states that the map shall identify fish and wildlife habitats in "previously undisturbed" areas and does not address "previously disturbed" areas. An agency cannot broaden statute by rule. Furthermore, the Mined Land Reclamation Act and Rules do not regulate abandoned or underground mines. The Agency contends the term "natural feature" *does* adequately describe fish and wildlife habitats without reiterating statute. The suggestion was not incorporated in final subsection R11-2-501(B)(2).

**Proposed R11-2-501(B)(6):**

COMMENT: "This Section should also contain utility lines and pipelines."

RESPONSE: Utility lines and pipelines are "structures," which are included in final subsection R11-2-501(B)(6). The suggested language was not incorporated.

**Proposed R11-2-504(A)(2):**

COMMENT: "This Section should define the map/aerial photo as 'of a scale to adequately depict and locate on-the-ground areas.'"

RESPONSE: The plan will be denied as administratively incomplete if any of the information submitted is inadequate for plan review. Although slightly redrafted for clarity, the recommendation was not incorporated in final subsection R11-2-504(A)(2).

**Proposed R11-2-505:**

COMMENT: "As stated for R11-2-303, some criteria should be incorporated to determine when revegetation is successful. Also, justification for not revegetating."

RESPONSE: The criteria for successful revegetation are listed in A.R.S. § 27-992(C). Reclamation of surface disturbances is plan-driven and site-specific. Justifying why revegetation is *not* required is unnecessary because revegetation is required *only* if it supports the post-mining land use (reference final subsection R11-2-701(E)). The exploration operation and mining unit revegetation sections and the revegetation and soil articles have been redrafted and combined in final Article 7.

**Proposed R11-2-505(A)(6):**

COMMENT: "We suggest that success criteria, monitoring, and contingency plans be identified for all revegetation plans. In our experience, it is important that persons planning revegetation consider these elements from the onset to improve the likelihood of success. At best, revegetation is difficult and numerous agencies have been struggling with how to ensure success for years."

RESPONSE: Revegetation success criteria and monitoring are addressed under A.R.S. § 27-992(C)(2). An agency cannot broaden statute by rule. The exploration operation and mining unit revegetation sections have been redrafted for clarity and brevity; however, this recommendation was not incorporated in final subsection R11-2-701(B).

**Proposed R11-2-602:**

COMMENT: "In the long term, success will depend on both mechanical and biological conditions. Requirements are only short term oriented and not biologically sound. This Section should consider more than only physical engineering and safety."

RESPONSE: "Reclamation" measures are defined in the Act and include only physical engineering ("stability") and safety. "Biological" success is defined in A.R.S. § 27-992(C). Final R11-2-602 was slightly redrafted to omit redundant language, but does not incorporate the recommendation.

**Proposed R11-2-603(A)(5):**

COMMENT: "We suggest inclusion of language of paragraph 5 be amended to include that roads may need to be left or reestablished to maintain adequate access to public and private lands, consistent with plans of landowners and land management agencies."

RESPONSE: Access to public and private lands is addressed in existing statutes. Final subsection R11-2-603(A) *does* provide that roads no longer needed for operations, reclamation,

or monitoring shall be reclaimed. Although the subsection was redrafted for brevity and to omit redundant language, the recommendation was not incorporated.

**Proposed R11-2-701:**

COMMENT: "Reasonable effort should be made to reestablish native plant species. Planting an exotic species to have the appearance of quick success, but is of questionable benefit and may result in introduction of another undesirable species into native plant communities off site. There may be circumstances where doing nothing is preferable to spreading undesirable plants."

RESPONSE: Native vs. non-native revegetation is a hotly contested issue. Both sides (those who support and those who oppose

**Arizona Administrative Register**  
**Notices of Final Rulemaking**

native species for revegetation) present compelling arguments. For the purposes of the Mined Land Reclamation Act and Rules, the species for revegetation must support the post-mining land use and is subject to plan approval. Although redrafted, the suggestion was not incorporated in final R11-2-702.

**Proposed R11-2-701(A):**

COMMENT: "This Section should also specify when revegetation is successful, i.e., a certain percentage of vegetative cover, successful growth over a period of years, etc. This Section could be referenced in R11-2-303 and R11-2-505, eliminating the need for duplication. Also, justification for not revegetating. Further, seed should be applied at specified application rates and standards. Seed should be purchased as certified pure live seed with proof of germination success. Seeding rate should be applied as pure live seed per acre."

RESPONSE: The intent of proposed R11-2-701(A) was to provide an enforceable standard for compliance with an approved reclamation plan; however, compliance with the Act, Rules, and any condition of an approved reclamation plan is more effectively addressed in Article 6 of the Act, specifically A.R.S. § 27-1022 (Compliance Orders). Proposed R11-2-303 and R11-2-505, which defined requirements for describing revegetation in a proposed reclamation plan have been redrafted to avoid duplication and combined with soil standards in final Article 7.

The criteria for successful revegetation are listed in A.R.S. § 27-992(C).

"Justification for not revegetating" is inappropriate as reclamation of surface disturbances is plan-driven and site-specific. Justifying why revegetation is *not* required is unnecessary because revegetation is required *only* if it supports the post-mining land use (reference final subsection R11-2-701(E)).

Purchasing seed as "pure live seed" with proof of germination success is a standard industry practice. Although the exploration operation and mining unit revegetation sections and the revegetation and soil articles have been redrafted and combined in final Article 7, these suggestions were not incorporated in final subsection R11-2-702(A).

**Proposed R11-2-701(B):**

COMMENT: "Include that ripping or disking should be done on contour in areas with steep slopes or where erosive soils exist to minimize rilling and gullyng."

RESPONSE: Erosion has been more appropriately addressed under final Article 6, Mining Unit Reclamation Standards in final R11-2-602. Erosion Control and Topographic Contouring. This suggestion was not incorporated in final subsection R11-2-702(A).

**Proposed R11-2-701(C)(2):**

COMMENT: "This subsection provides that the establishment of vegetation with characteristics different than the pre-existing vegetation or vegetation on adjacent lands will constitute successful reclamation if *any* of 3 separate factors apply. However, the list of factors is connected with the word "and" (see subsection (C)(2)), suggesting that all of the factors must be demonstrated in order for non-conforming vegetation to constitute successful reclamation. In order to resolve this potential inconsistency, we respectfully request that the connector "and" be deleted from line 4 of subsection (C)(2)."

RESPONSE: The Agency agreed with the comment and redrafted the subsection as suggested in final subsection R11-2-702(B)(2). Please note, however, while this Section lists the criteria to be met for successful "reclamation," the successful "revegetation" criteria to be met are listed in A.R.S. § 27-992(C)(2).

**Proposed R11-2-801(A):**

COMMENT: "Suggest dropping this item. If revegetation is required, the likelihood of success would be diminished if topsoil or growth medium is not saved."

RESPONSE: Although this subsection had been drafted to clarify the intent and ambiguous language of A.R.S. § 27-974, the Agency determined this subsection either reiterated or contradicted the statute and it has been deleted from the final rulemaking.

**Proposed R11-2-801(B):**

COMMENT: "To ensure that the appropriate statutory term (i.e., 'surface disturbance' (see A.R.S. § 27-901.16)) is used consistently throughout the mined land reclamation rules, we respectfully request that the word 'surface' be inserted before the word 'disturbance' in this subsection."

RESPONSE: The Agency agreed with the comment, however, the introductory sentence reiterated A.R.S. § 27-974 and was deleted. The remainder of this subsection was redrafted to reflect the language added to implement A.R.S. § 27-974 in final R11-2-703.

**Proposed R11-2-901(B)(1):**

COMMENT: "This item is confusing. The term defined is 'Estimated Future Reclamation Costs' and the definition contains the words 'current reclamation cost estimate.' This needs clarification."

RESPONSE: The Agency agreed with the comment and this definition has been deleted. Occurrences of the term "estimated future reclamation costs" in subsequent sections have been replaced with the term "costs estimated in the approved reclamation plan for reclamation," which needs no definition. Numbering in this definitions Section has also been deleted, as permitted by A.A.C R1-1-408(G) in final subsection R11-2-801(B).

Notices of Final Rulemaking

**Proposed R11-2-903(A):**

COMMENT: "Add detoxification of leach facilities."

RESPONSE: Detoxification of leach facilities is regulated under the Arizona Mining Code, Title 11, Article 22 and under ADEQ's rules for Aquifer Protection Permits (R18-11). Although slightly redrafted for consistency, the suggestion was not incorporated in final subsection R11-2-802(A).

**Proposed R11-2-904:**

COMMENT: "The use of the phrase 'blanket performance bond' in both the title and text of this Section suggests that only bonds may be used to cover more than 1 exploration operation or mining unit for financial assurance purposes. However, we believe that the intent behind this Section was to provide that any 1 of the financial assurance mechanisms (e.g., surety bonds, certificates of deposit, trust funds, corporate financial tests, corporate guarantees) provided for in A.R.S. § 27-991(B) could be used to cover multiple exploration operations or mining units. Accordingly, we respectfully request that the title of this Section be revised as follows: 'Blanket FINANCIAL ASSURANCE Performance Bond.' We also request that the phrase 'blanket performance bond,' as used in the text of this Section, be replaced with the phrase 'single financial assurance mechanism.'"

RESPONSE: The Agency agreed with this comment. The rule name has been retitled accordingly and this Section has been redrafted in final subsection R11-2-803(A) to clarify that a financial assurance mechanism provided for 1 or more mining units or facilities shall be sufficient to cover the aggregate reclamation costs of the mining units or facilities for which it has been provided. In addition, a new subsection was added to ensure consistency with A.R.S. § 27-993(B), which allows an owner or operator to provide a statewide financial assurance mechanism for exploration operations.

**Proposed R11-2-906(A):**

COMMENT: "We respectfully request that this subsection be amended as follows '~~Beginning July 1, 1996 and as~~ As required by the Act and this Article,....'"

RESPONSE: Proposed "R11-2-906. Financial Assurance Mechanisms" has been redrafted. This Section was too long and did not comply with the Secretary of State's rule, A.A.C. R1-1-408(F), which limits subsections to 4 levels. Although the agency agreed with the comment, the proposed Section heading and introductory sentence were deleted. The introductory sentence reiterated A.R.S. § 27-991(B), and the Section heading was no longer needed.

Each proposed financial assurance mechanism second-level subsection has been renumbered as a separate final Section. The introductory statements for each financial assurance mechanism second-level subsection have been deleted as they reiterated A.R.S. § 27-991(B).

**Proposed R11-2-906(A)(3)(f):**

COMMENT: "We respectfully request that this subsection be amended as follows: 'The trust fund shall be funded in an amount at least equal to ~~the then-current~~ COST estimated for reclamation costs IN THE APPROVED RECLAMATION PLAN or funded as part....' This change will clarify that the amount of financial assurance provided by an owner or operator should be consistent with the reclamation cost estimated in the approved reclamation plan (see R11-2-903 (as proposed)). Similar revisions should be made at all other locations in the mined land reclamation rules where the phrase 'current cost estimate for reclamation' or corresponding language is used. We have identified the following additional locations that should be revised consistent with the change suggested above: (1) (R11-2-906(A)(4)(b) (first sentence); (2) R11-2-906(A)(5)(c); (3) R11-2-906(A)(6)(b)(i); (4) R11-2-906(A)(8)(a)(i)(B) and (D); and (5) R-11-2-906(A)(8)(a)(ii)(B) and (D)."

RESPONSE: The Agency agreed with the comment and redrafted this subsection in final R11-2-806 (D). This subsection has been moved within the Section to provide a more logical reading, and has also been redrafted to correct language which could have allowed the first year of the trust to be unfunded and to correct language which left pre-existing surface disturbances unaccounted for. Occurrences of the term "estimated future reclamation costs" in subsequent sections have also been replaced with the term "costs estimated in the approved reclamation plan for reclamation." The definition for "estimated future reclamation costs" in final subsection R11-2-801(B) has been deleted as it is no longer necessary.

**Proposed R11-2-906(A)(5)(a):**

COMMENT: "The second sentence of this subsection states that if insurance is used to show financial assurance for reclamation, the insurance must be effective ~~before~~ creating surface disturbances. We recommend deleting this sentence because it does not make sense in the context of existing mining operations that already have created surface disturbances."

RESPONSE: The Agency agreed with this comment and this sentence has been deleted in final subsection R11-2-808(A).

**Proposed R11-2-906(A)(6)(e):**

COMMENT: "To ensure consistency with its counterpart in R11-2-906(A)(8)(e), the second sentence of this subsection should be revised as follows: 'If the State Mine Inspector ~~finds~~ MAKES A WRITTEN FINDING, on the basis of reports or other information, THAT the owner or operator, and/or guarantor, no longer meets the financial test requirements of R11-2-906(A)(6)(b) or R11-2-906(A)(6)(c), the owner or operator shall obtain alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after notification of the THIS WRITTEN FINDING.'"

RESPONSE: The Agency agreed with the comment and has redrafted the subsection accordingly in final subsection R11-2-

**Arizona Administrative Register**  
**Notices of Final Rulemaking**

809(F).

**Proposed R11-2-906(A)(6)(f):**

COMMENT: "In order to clarify that only updated information needs to be submitted on an annual basis, we request that the following be inserted at the end of the last sentence of this subsection: 'to the extent the information has changed.' "

RESPONSE: It is the Agency's intent to have *all* of the required information submitted on an annual basis for the purpose of "updating" information. No change was made in final subsection R11-2-809(F).

**Proposed R11-2-906(A)(8)(a):**

COMMENT: "The first sentence in this subsection references a financial test in R-11-906(A)(8)(b). We believe that this reference is incorrect since there is no specific financial test contained in R11-2-906(A)(8)(b). Accordingly, we recommend that the citation 'R11-2-906(a)(8)(b)' in the first sentence be replaced with the phrase 'this Section.' "

RESPONSE: Citations to the subsections for financial tests and the subsections for criteria for successful completion of financial tests were transposed. The citations have been corrected and final R11-2-811 has been slightly redrafted for clarity.

**Proposed R11-2-906(A)(8)(c):**

COMMENT: "The 2nd sentence in this subsection needs to be revised to be consistent with the suggested revision of R11-2-906(A)(6)(f)."

RESPONSE: It is the Agency's intent to have *all* of the required information submitted on an annual basis for the purpose of "updating" information. No change was made in final subsection R11-2-811(D).

**Proposed R11-2-906(A)(8)(e):**

COMMENT: "We respectfully request that the first sentence in this subsection be revised as follows: 'The State Mine Inspector may, based on reasonable belief that the owner or operator may no longer meet the requirements of R11-2-906(A)(8)(a)(i) or R11-2-906(A)(8)(a)(ii), require reports of financial conditions BY MAKING A WRITTEN REQUEST, at any time, from the owner or operator, in addition to those specified in R11-2-906(A)(8)(b).' This suggested change is consistent with other provisions in the proposed mined land reclamation rules that require the State Mine Inspector to request additional information or make certain findings in writing."

RESPONSE: The Agency agreed with the comment and has redrafted the subsection accordingly in final subsection R11-2-811(F).

**Proposed R11-2-910(A):**

COMMENT: "As currently drafted, this subsection states that financial assurance shall not be released until all conditions of the Mined Land Reclamation Act, the mined land reclamation rules, and the approved reclamation plan have been satisfied. The requirement to comply with all conditions in an approved reclamation plan before release of financial assurance, however, is inconsistent with the provisions in the Mined Land Reclamation Act that expressly authorize the release of part of financial assurance. See A.R.S. § 27-996.A ('An owner or operator may apply... to release all or part of the financial assurance provided under this article.'). Release of part of financial assurance therefore implies that not all conditions of an approved reclamation plan will have been met. We believe that the requirement to comply with all conditions and requirements of the Act and the mined land reclamation rules is sufficient to ensure that all relevant requirements have been satisfied prior to a release of part of the financial assurance. We therefore respectfully request that this subsection be amended as follows: 'The financial assurance shall not be released until all conditions and requirements of the Act, AND this Chapter, ~~and the approved reclamation plan~~ have been satisfied.'"

RESPONSE: The Agency agreed with this comment and final subsection R11-2-817(A) has been redrafted for clarity.

**Proposed R11-2-910(B)(2):**

COMMENT: "The Mined Land Reclamation Act provides that either the owner *or* operator of an exploration operation or mining unit may apply for the release of financial assurance. See A.R.S. § 27-996.A. Consequently, we believe that notification that a request for release of financial assurance will be denied should be given to *both* the owner and the operator. Accordingly, this subsection should be revised by inserting the phrase 'owner and' before the word operator." "

RESPONSE: The Agency agreed with the comment and the subsection has been redrafted to include both the owner and operator, and has been further refined to be consistent with A.R.S. § 27-996 in final subsection R11-2-817(B)(2).

**Proposed R11-2-910(C):**

COMMENT: "Consistent with the suggested revision in R11-2-910(B)(2), this subsection should be revised by inserting the phrase 'owner or' immediately before the word 'operator.' This change will clarify that either the owner or the operator may appeal a decision by the State Mine Inspector to deny a request for release of financial assurance."

RESPONSE: The Agency agreed with this comment and has redrafted the subsection to include "owner or" and to contain a reference to the Administrative Procedures Act in final subsection R11-2-817(C).

**Proposed R11-2-911(A) and (B):**

COMMENT: "These sections discuss financial assurances filed with federal agencies. Would this be applicable only when a memorandum of understanding is in place. "This needs to be clarified."

RESPONSE: The Agency partially agreed with the comment. Subsection (A) was redrafted for clarity in final subsection R11-2-818(A), however, subsection (B) was not changed as it is appropriate as drafted in final subsection R11-1-818(B).

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
Not applicable.
12. Incorporations by reference and their location in the rules:  
Not applicable.
13. Was this rule previously adopted as an emergency rule?:  
No
14. The full text of the rules follows:

**TITLE 11. MINES**

**CHAPTER 2. STATE MINE INSPECTOR**

**MINED LAND RECLAMATION**

**ARTICLE 1. DEFINITIONS**

R11-2-101. Definitions

**ARTICLE 2. GENERAL REGULATORY PROVISIONS**

R11-2-201. Document Submittals  
 R11-2-202. Preservation of Documents  
 R11-2-203. Extension of Time for Submittal of Plan  
 R11-2-204. Supersedure by Federal Plan  
 R11-2-205. Extension of Time for Initiation of Reclamation  
 R11-2-206. Variance  
 R11-2-207. Cessation of Mining Activity

**ARTICLE 3. EXPLORATION OPERATION  
RECLAMATION PLAN**

R11-2-301. Exploration Operation Reclamation Plan Content  
 R11-2-302. Annual Renewal

**ARTICLE 4. EXPLORATION OPERATION  
RECLAMATION STANDARDS**

R11-2-401. Restricted Access  
 R11-2-402. Trash Removal

**ARTICLE 5. MINING UNIT RECLAMATION PLAN**

R11-2-501. Mining Unit Reclamation Plan Content  
 R11-2-502. Life of Approved Reclamation Plan  
 R11-2-503. Multiple Post-mining Land Uses  
 R11-2-504. Annual Status Report

**ARTICLE 6. MINING UNIT RECLAMATION STANDARDS**

R11-2-601. Public Safety Standards  
 R11-2-602. Erosion Control and Topographic Contouring  
 R11-2-603. Roads

**ARTICLE 7. REVEGETATION AND SOIL STANDARDS**

R11-2-701. Revegetation Provisions  
 R11-2-702. Revegetation Standards  
 R11-2-703. Soil Conservation  
 R11-2-704. Redistribution of Soil  
 R11-2-705. Off-site Soil

**ARTICLE 8. FINANCIAL ASSURANCE**

R11-2-801. Definitions  
 R11-2-802. Amount of Financial Assurance  
 R11-2-803. Blanket Financial Assurance

R11-2-804. Surety Bonds  
 R11-2-805. Certificates of Deposit  
 R11-2-806. Trust Funds  
 R11-2-807. Letter of Credit  
 R11-2-808. Insurance  
 R11-2-809. Certificates of Self-insurance  
 R11-2-810. Cash Deposits  
 R11-2-811. Corporate Financial Tests  
 R11-2-812. Annuities  
 R11-2-813. Final Action on Financial Assurance Mechanisms  
 R11-2-814. Incremental Financial Assurance  
 R11-2-815. Financial Assurance Funding  
 R11-2-816. Limited Individual Financial Assurance for Single Unit  
 R11-2-817. Application for Release of Financial Assurance  
 R11-2-818. Forfeiture Criteria/Forfeiture of Financial Assurance  
 R11-2-819. Notification of Forfeiture Action  
 R11-2-820. Avoidance of Forfeiture  
 R11-2-821. Notice of Exercise of Forfeiture  
 R11-2-822. Full Release of Financial Assurance

**ARTICLE 1. DEFINITIONS**

**R11-2-101. Definitions**

In this Chapter and the Act, unless the context otherwise requires:

"Act" means the Arizona Mined Land Reclamation Act, enacted in 1994, Arizona Revised Statutes 27-901 et seq., as amended.

"Approved reclamation plan" means the owner's or operator's plan for reclaiming surface disturbances after approval by the State Mine Inspector.

"Backfill" means earth, overburden, mine development rock, or imported material used to replace material removed during mining.

"Commodities in commerce" means commodities that are mined for use or conversion into a salable or usable product.

"Completion" or "Completing" means the permanent discontinuance of mining activity of an exploration operation or mining unit without the intent to resume operation.

"Growth media" means substances or materials that promote or support vegetation.

**Arizona Administrative Register**  
**Notices of Final Rulemaking**

"Inspection" means a visual review of an exploration operation or mining unit to assure compliance with the Act, this Chapter, or any condition of an approved reclamation plan.

"Institutional controls" means mechanisms that guide, manage, or exercise restraint or direction, including deed restrictions to protect public safety, fencing districts, and physical control of access.

"Mining activity" means any activity directly involved in mineral exploration, development, or production at or on an exploration operation or a mining unit.

"Operator" means any person who is legally responsible for directing mining activity at an exploration operation or a mining unit.

"Owner" means any person who owns land with surface disturbances subject to the Act and this Chapter.

"Person" means an individual, corporation, governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

"Showing of good cause" means a demonstration by the owner or operator of a reason beyond the owner's or operator's control which prevents or limits the ability to act within required time limits or a demonstration by the owner or operator that the owner or operator is making good faith efforts toward the coordination and submittal of a reclamation plan.

"Subsidence" means the measurable lowering of a portion of the earth's surface or substrata.

**ARTICLE 2. GENERAL REGULATORY PROVISIONS**

**R11-2-201. Document Submittals**

- A. An owner or operator shall submit to the State Mine Inspector by certified mail (return receipt requested), express mail (with a receipt), or by hand delivery the following:
1. Reclamation plans and amendments (1 original and 4 copies);
  2. Certificates of disclosure;
  3. Financial assurance mechanisms;
  4. Notices of transfer;
  5. Applications, petitions or requests for or objections to substantial changes, variances, notices of proposed changes, amendments, releases of financial assurance mechanisms; or
  6. Any other matter that may require action by the State Mine Inspector.
- B. All submittals shall be dated and signed by the owner or operator or by a person who has legal authority to sign on behalf of the owner or operator. All submittals shall include the names and addresses of the owner and operator and any individuals who will be regulatory contacts.

**R11-2-202. Preservation of Documents**

An owner or operator shall retain a copy of the current approved reclamation plan, reclamation plans for areas for which reclamation has been completed, and the most recent annual status report until all reclamation measures have been completed. These documents shall be available for examination by the inspector.

**R11-2-203. Extension of Time for Submittal of Plan**

The owner or operator may request 1 or more extensions of time for submittal of a reclamation plan for an existing exploration opera-

tion or an existing mining unit. If the State Mine Inspector grants an extension of time to submit a reclamation plan for an existing exploration operation or an existing mining unit, the extension shall not exceed 90 days. For each subsequent extension, the owner or operator shall submit a revised request which indicates any changes in the relevant factors for consideration shown in the previous request for extension.

**R11-2-204. Supersedure by Federal Plan**

- A. The owner or operator of an exploration operation or a mining unit which is located in part or in whole on land administered by a federal agency may submit to the State Mine Inspector a request for supersedure pursuant to A.R.S. § 27-932. Such a request shall include a copy of the federal reclamation plan and the financial assurance mechanism.
- B. Within 30 days after receiving a request for supersedure, the State Mine Inspector shall determine in writing whether the federal reclamation plan and financial assurance mechanism are consistent with and shall supersede the requirements of the Act and this Chapter. If the State Mine Inspector denies the request to supersede, the State Mine Inspector shall provide an explanation of the reasons for denial in the written determination.

**R11-2-205. Extension of Time for Initiation of Reclamation**

- A. The owner or operator of an exploration operation or mining unit shall submit a written request for an extension of time to begin reclamation under A.R.S. § 27-926(B) at least 45 days before the time to begin reclamation under A.R.S. § 27-926.
- B. The State Mine Inspector shall evaluate and either approve or deny the request within 30 days. If the State Mine Inspector fails to act on the request within 30 days after receipt, the request shall be considered approved. If the State Mine Inspector denies the request for an extension, the State Mine Inspector shall state the reasons for denial in writing.

**R11-2-206. Variance**

- A. In addition to information required by the Act or elsewhere in this Chapter, a request for variance submitted pursuant to A.R.S. § 27-931(A) shall include:
1. Identification by owner or operator and mine name, if any, of the exploration operation or mining unit for which the variance is sought;
  2. A descriptive location of the property on which the exploration operation or mining unit is located;
  3. Identification of the Section of this Chapter or requirement or condition of the approved reclamation plan from which the variance is sought;
  4. The justification for the variance; and
  5. Alternative methods or measures to be used.
- B. Within 30 days after receiving a variance request pursuant to A.R.S. § 27-931(A), the State Mine Inspector shall grant a conditional order authorizing the variance or deny the request in writing. The State Mine Inspector shall state the reasons for the determination.

**R11-2-207. Cessation of Mining Activity**

- A. The cessation of mining will be considered to have occurred if any of the following occur:
1. The person conducting the mining activity has gone out of business and there is no succeeding legal entity;
  2. No mining activity has taken place within 1 year from the date the most recent annual status report was filed with the State Mine Inspector and no staffed office remains on the site;
  3. The extension of the time to begin reclamation requested

by the owner or operator and approved by the State Mine Inspector under R11-2-205 has expired and no other extension has been granted, or

4. The State Mine Inspector has made a written determination that the mine has been temporarily or permanently abandoned.

**ARTICLE 3. EXPLORATION OPERATION RECLAMATION PLAN**

**R11-2-301. Exploration Operation Reclamation Plan Content**

- A. In addition to the content requirements found in A.R.S. § 27-951(A), the reclamation plan shall also include a sketch of the layout of the exploration project, showing the locations, nature, and acreage of each disturbance. The owner or operator shall not be required to include specific survey coordinates, identifying exact topographic features, or exact geographic locations.
- B. For existing exploration operations, the owner or operator shall include the estimated costs to perform the reclamation measures to determine financial assurance requirements under Article 5 of the Act and Article 8 of this Chapter.

**R11-2-302. Annual Renewal**

- A. Every owner or operator with an approved reclamation plan shall annually, within 60 days after the anniversary date of the approved reclamation plan, submit to the State Mine Inspector a request for annual renewal pursuant to A.R.S. § 27-955. The request shall:
  1. Provide the status of the exploration operation reclamation;
  2. Include the total number of acres of surface disturbances, the number of acres reclaimed during the reporting year, and the number of acres of surface disturbances which have not yet been reclaimed; and
  3. Include any modifications to the approved reclamation plan.
- B. The State Mine Inspector shall renew the approved reclamation plan, including modifications, if the renewal includes modifications that are consistent with the criteria of the Act and this Chapter and if additional financial assurance required by the Act has been submitted to the State Mine Inspector. If the renewal includes modifications to the approved plan that constitute a substantial change, the State Mine Inspector shall renew the approved reclamation plan under the procedures of A.R.S. §§ 27-927 and 27-929 or deny the proposed substantial change.
- C. If the State Mine Inspector fails to provide the owner or operator with a written renewal determination within 60 days after receipt of the request for annual renewal, the approved reclamation, including modifications that do not constitute substantial changes, shall be deemed renewed.

**ARTICLE 4. EXPLORATION OPERATION RECLAMATION STANDARDS**

**R11-2-401. Restricted Access**

Under A.R.S. § 27-953(5), access to those portions or places of open pits or trenches in places frequented by the public shall be restricted by measures including fencing and the posting of visible warning signs.

**R11-2-402. Trash Removal**

The owner or operator shall remove trash and other materials and structures incidental to exploration that pose a threat to public safety, create a public nuisance, or are inconsistent with an

approved reclamation plan.

**ARTICLE 5. MINING UNIT RECLAMATION PLAN**

**R11-2-501. Mining Unit Reclamation Plan Content**

- A. In addition to the proposed reclamation measures that are necessary to achieve the post-mining land use found under A.R.S. §§ 27-971(B)(9)(a) through (d), the reclamation plan shall include procedures to aid in the development of vegetation consistent with the proposed post-mining land use objective for surface disturbances where the post-mining land use objective is grazing, wildlife habitat, or forestry. The type, density, and diversity of vegetation proposed shall depend on what is technically and economically practicable given site-specific characteristics such as climate and the availability and quality of soil.
- B. Maps of the existing or proposed surface disturbances submitted pursuant to A.R.S. § 27-971(B)(8) for mining units shall indicate the following:
  1. Existing and proposed post-mining and post-reclamation physical topography;
  2. Natural features, including surface water;
  3. Surface disturbances, pits, excavations, and building sites;
  4. Development rock piles, tailings dams and impoundments, heaps for leaching, spoil, soil or growth media storage piles, overburden stockpiles, and other piles of unconsolidated material;
  5. Solution ponds, settling ponds, and non-tailings impoundments;
  6. Roads, buildings, structures, and stationary equipment;
  7. Final post-mining land use objectives for each portion of the surface disturbance; and
  8. Boundaries of the mining unit.

**R11-2-502. Life of Approved Reclamation Plan**

An approved reclamation plan, along with any approved substantial changes, shall remain in effect until reclamation is complete and all financial assurance is released.

**R11-2-503. Multiple Post-Mining Land Uses**

An owner or operator may list multiple post-mining land uses for a mining unit if the reclamation plan shows the post-mining land use for each area and each use satisfies the requirements of the Act and this Chapter.

**R11-2-504. Annual Status Report**

- A. An owner or operator with an approved reclamation plan shall submit an annual status report for the preceding year to the State Mine Inspector within 60 days after the anniversary date of reclamation plan approval. The status report shall:
  1. Provide the status of the mining unit;
  2. Include a map, an aerial photograph, or both, identifying the location of the surface disturbance and reclaimed area and the year in which the surface disturbance and reclamation was completed. If there have been no changes in the previous year, then neither new maps nor new aerial photographs are necessary, and the owner or operator shall state there have been no changes in the annual status report; and
  3. Include the total number of acres of surface disturbances, the number of acres reclaimed during the reporting year, and the number of acres of surface disturbances which have not yet been reclaimed.



**ARTICLE 6. MINING UNIT RECLAMATION STANDARDS**

**R11-2-601. Public Safety Standards**

- A. Reclamation activities at mining units shall be designed to reduce hazards to public safety to the extent technically and economically practicable by measures, including:
  - 1. Removal of scrap metal, wood, trash and other debris that pose a threat to public safety, or create a public nuisance, or are inconsistent with an approved reclamation plan; and
  - 2. Regrading slopes as prescribed under R11-2-602.
- B. The owner or operator shall maintain structures, equipment, and excavations at the reclamation site in a safe manner and shall restrict access to provide for public safety. Where hazards to public safety cannot be adequately reduced through reclamation measures; where buildings, structures, and excavations remain as part of the approved post-mining land use; or where a mining unit has been exempted from reclamation under A.R.S. § 27-975(A), any hazard to public safety shall be reduced by:
  - 1. Constructing berms, fences, barriers, or any combination of these measures to restrict public access when technically and economically practicable; and
  - 2. Posting visible warning signs in locations where public access is available.

**R11-2-602. Erosion Control and Topographic Contouring**

- A. Mining units shall be reclaimed to a stable condition for erosion and seismic activity.
- B. Grading and other topographic contouring methods shall be conducted, as necessary, to establish final land forms which are:
  - 1. Suitable for the post-mining land use objective in the approved reclamation plan.
  - 2. Stable under static and dynamic conditions as certified by a qualified engineer considering the following:
    - a. Site-specific seismic conditions;
    - b. Safety consistent with good engineering practices; and
    - c. The hazard to public safety, if failure occurs.
- C. Site-specific grading, revegetation, or other proposed erosion-control measures shall be conducted, as necessary, to address erosion so that permanent piles of mine development rock, overburden, and tailings shall not restrict surface drainages in a manner that contributes to excessive erosion or which compromises the stability of the reclaimed facility.

**R11-2-603. Roads**

- A. Reclamation of a road that is not included in the approved reclamation plan as part of the approved post-mining land use shall begin once the road is no longer needed for operations, reclamation, or monitoring.
- B. The following reclamation measures shall be conducted, as necessary, to achieve the post-mining land use included in the approved reclamation plan:
  - 1. Vehicular traffic shall be controlled on the reclamation area to achieve the reclamation objectives;
  - 2. Surface drainage patterns shall be restored to pre-mining conditions or new patterns shall be established;
  - 3. All bridges and culverts shall be removed or stabilized in place;
  - 4. Bridges and culverts left in place shall be protected from erosion with rock, concrete, or riprap; and
  - 5. Roadbeds shall be ripped, plowed, and scarified and revegetated, as necessary, to achieve the post-mining land

use.

**ARTICLE 7. REVEGETATION AND SOIL STANDARDS**

**R11-2-701. Revegetation Provisions**

- A. If revegetation is part of the proposed reclamation plan, the plan shall describe the:
  - 1. Season of revegetation,
  - 2. Species and amounts per acre of seeds or flora, and
  - 3. Planting methods.
- B. If the proposed reclamation plan includes mulching, irrigation, pest control, disease control, or growth management measures, the proposed reclamation plan shall specifically describe the techniques, methods, controls, or measures to be used.

**R11-2-702. Revegetation Standards**

- A. Where surface disturbances result in compaction of the soil, ripping, disking, or other means shall be used in areas to be revegetated to reduce compaction and to establish a suitable root zone in preparation for planting.
- B. Revegetation shall be conducted to establish plant species that will support the approved post-mining land use. The establishment of vegetation species, density, or diversity which is different than pre-existing conditions or on adjacent lands shall constitute successful reclamation if any of the following apply:
  - 1. The post-mining land use is different than the pre-mining land use or the use of adjacent lands;
  - 2. The site-specific nature of the surface disturbance, including soil conditions and topography, is such that the establishment of pre-existing or adjacent conditions is not technically or economically practicable; or
  - 3. The establishment of different species is preferable for control of erosion.
- C. Planting shall be conducted during the most favorable period of the year for plant establishment.
- D. Soil stabilizing practices or irrigation measures, or both, may be used to establish vegetation.
- E. This Section only applies if vegetation or revegetation measures are included in the approved reclamation plan.

**R11-2-703. Soil Conservation**

If soil conservation is required by A.R.S. § 27-974, any stockpiles of conserved soil shall be marked with legible signs that identify the stockpile as "SOIL." A soil stockpile shall be stabilized, if necessary, to prevent excessive losses from erosion.

**R11-2-704. Redistribution of Soil**

Before redistribution of soil, the regraded land shall be treated, if necessary, to reduce the potential for slippage of the redistributed material or to enhance root penetration, or both. Soil and other materials shall be redistributed in a manner that prevents excess compaction and achieves a thickness consistent with the approved post-mining land use.

**R11-2-705. Off-site Soil**

Soil may be brought in from an off-site location, and may include any growth media that will support vegetation, will provide a stable growing surface, and will not create a hazard to public safety.

**ARTICLE 8. FINANCIAL ASSURANCE**

**R11-2-801. Definitions**

- A. Unless expressly defined in the Act or this Chapter, the terms used in this Article have the same meanings as understood pursuant to generally accepted accounting principles and practices.
- B. In addition to the definitions provided in A.R.S. § 27-901, the following definitions apply to this Article:

**Notices of Final Rulemaking**

"ICPA" means Independent Certified Public Accountant.

"Parent corporation" means a corporation which directly owns at least 50% of the voting stock of the corporation which is the owner or operator. Any latter corporation is considered a "subsidiary" of the parent corporation.

"Substantial business relationship" means the extent of a business relationship which is necessary, under applicable state law, to make a guarantee contract (issued on the basis of that relationship) valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, so that a currently existing business relationship between guarantor and the owner or operator is shown to the satisfaction of the State Mine Inspector.

**R11-2-802. Amount of Financial Assurance**

- A. In estimating the cost of executing the reclamation plan, all activities in the reclamation plan shall be addressed, including, if applicable:
  - 1. Earth moving, regrading, and stabilization of surface disturbances included in the reclamation plan;
  - 2. Revegetation, preparation of seedbed, and planting;
  - 3. Demolition of buildings and other structures;
  - 4. For new exploration operations, removal or disposal of trash and other materials and structures incidental to exploration;
  - 5. Any ongoing or long-term activities which are required to maintain the effectiveness of reclamation or are necessary in place of reclamation, including periodic clean-out of sediment basins or maintenance of berms and fences which are used to prevent access to areas which pose a threat to public safety;
  - 6. Equipment mobilization and demobilization;
  - 7. Contractor profit; and
  - 8. Administrative overhead.
- B. In addition to submitting the estimated costs to perform each of the proposed reclamation measures required under A.R.S. § 27-971(B)(11) or R11-2-301(B), the owner or operator of a mining unit or existing exploration operation shall submit to the State Mine Inspector:
  - 1. Documentation for the calculation of the estimated costs, and
  - 2. The source of the estimated costs.
- C. The State Mine Inspector shall review the owner's or operator's estimate of the cost for reclamation and determine if the estimate is adequate to complete all required reclamation.
- D. If the State Mine Inspector determines the estimated cost of executing the reclamation plan is not adequate to complete all required reclamation, the reclamation plan shall be considered incomplete under A.R.S. §§ 27-952 or 27-972.
- E. If an owner or operator submits a written request for a reduction of financial assurance, along with a demonstration of sufficient financial ability pursuant to A.R.S. § 27-992(B), the State Mine Inspector shall grant or deny the request in writing within 30 days after receiving the request.

**R11-2-803. Blanket Financial Assurance**

- A. A single financial assurance mechanism covering 2 or more mining units or facilities may be provided by an owner or operator instead of separate financial assurances for each unit or facility. If an owner or operator provides a single financial assurance mechanism, it shall demonstrate the financial ability to fulfill the aggregate reclamation costs of the mining units or

facilities covered by the single financial assurance mechanism.

- B. If an additional unit or facility is to be covered under a single financial assurance mechanism previously provided to the State Mine Inspector, the owner or operator shall provide an updated financial assurance mechanism which demonstrates the financial ability to fulfill the aggregate reclamation costs of the mining units or facilities covered by the single financial assurance mechanism.
- C. A single financial assurance mechanism covering 2 or more exploration operations may be provided by the owner or operator pursuant to A.R.S. § 27-993.

**R11-2-804. Surety Bonds**

An owner or operator may provide the State Mine Inspector with a surety bond as financial assurance for reclamation. The surety bond shall be an indemnity agreement in a sum certain payable to the state of Arizona, executed by the owner or operator as principal and shall be supported by the performance guarantee of a corporation licensed to do business as a surety in the state of Arizona.

**R11-2-805. Certificates of Deposit**

- A. An owner or operator may provide the State Mine Inspector with a certificate of deposit which shows funds are available for reclamation of surface disturbances. The certificate of deposit shall name the state of Arizona as beneficiary. The financial institution issuing the certificate of deposit shall be a Federal Deposit Insurance Corporation-insured entity whose operations are regulated by a federal or state agency.
- B. The owner or operator may redeem the certificate of deposit if alternative financial assurance that meets the requirements of the Act and this Chapter is substituted.

**R11-2-806. Trust Funds**

- A. An owner or operator may satisfy the requirements of this Article by establishing a trust fund that meets the requirements of the Act and this Chapter. The trust fund shall name the state of Arizona as the primary beneficiary. The trustee shall be an entity which has the authority to act as trustee and whose trust operations are regulated and examined by a federal or state agency.
- B. An owner or operator may satisfy the requirements of the trust fund by establishing a trust fund with a pay-in period that meets the requirements of the Act and this Chapter and by submitting an original signed duplicate of the trust agreement to the State Mine Inspector.
- C. A copy of the trust agreement shall be placed in the facility's operating record.
- D. The trust fund shall be initially funded in an amount at least equal to the costs estimated in the approved reclamation plan for reclamation of existing surface disturbances covered by the Act and any surface disturbances to occur in the first year of the trust fund.
- E. Payments into the trust fund, other than the initial funding, shall be made annually, at a minimum, with subsequent payments made not later than 30 days after each annual anniversary of the date of the first payment by the owner or operator. Annual payments shall be in an amount adequate to pay all costs of reclamation for land to be disturbed in that annual period.
- F. If the property owner or operator establishes a trust fund after having used 1 or more alternate mechanisms specified in this Article, the initial payment into the trust fund shall be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this Section.

**R11-2-807. Letters of Credit**

- A. An owner or operator may satisfy the requirements of this

**Notices of Final Rulemaking**

Article by obtaining an irrevocable stand-by letter of credit. The letter of credit shall be effective to receive financial assurance approval. The issuing institution shall be an entity which has the authority to issue letters of credit, is federally insured, and whose letter-of-credit operations are regulated and examined by a federal or state agency.

- B. The letter of credit shall be irrevocable and issued for a period set to exceed 1 year by at least 90 days and in an amount at least equal to the costs estimated in the approved reclamation plan for reclamation. The letter of credit shall provide that the expiration date will automatically renew as approved by the State Mine Inspector for a period of at least 1 year, unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the State Mine Inspector 120 days in advance of cancellation. If the letter of credit is canceled by the issuing institution, the owner or operator shall obtain alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after the notice of cancellation.
- C. The letter of credit shall indicate the conditions on which the state of Arizona may draw on the letter of credit.
- D. The property owner or operator may, with notification to the State Mine Inspector, cancel the letter of credit if alternate financial assurance that meets the requirements of the Act and this Chapter is substituted or if the owner or operator is released from the requirements of this Article under A.R.S. § 27-996, R11-2-817, or R11-2-822.

**R11-2-808. Insurance**

- A. An owner or operator may show financial assurance for reclamation by obtaining insurance that meets the requirements of this Section. At a minimum, the insurer shall be a non-captive insurance company licensed to transact the business of insurance by the Department of Insurance, or eligible to provide insurance as an excess or surplus lines insurer in the state of Arizona.
- B. The reclamation insurance policy shall guarantee funds will be available to reclaim all disturbed lands and be available when the operation fails to comply with the approved reclamation plan. The policy shall also guarantee that, once reclamation begins, the insurer will be responsible for payment up to an amount equal to the face amount of the policy, under the direction of the State Mine Inspector to the party specified by the State Mine Inspector.
- C. A policyholder may, with notification to the State Mine Inspector, receive partial payment for reclaimed areas. The insurance policy shall provide that requests for payment will be granted by the insurer only if the remaining value of the policy is adequate to cover the remaining costs of reclamation. The policyholder shall notify the State Mine Inspector that payment has been received.
- D. The insurance policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for the failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. The insurance policy shall provide that if there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the policyholder and to the State Mine Inspector 120 days in advance of the action. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect if, before the date of expiration, the premium due is paid.
- E. The insured may cancel the insurance policy, with notification to the State Mine Inspector, if alternate financial assurance that meets the requirements of the Act and this Chapter is sub-

stituted.

**R11-2-809. Certificates of Self-Insurance**

- A. An owner or operator may use self insurance in combination with a guarantee only if, to meet the requirement of the financial test under this Article, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.
- B. An owner or operator, and/or guarantor, may satisfy the requirements of this Article upon successful completion of the financial test specified in this Section. Successful completion is determined by meeting the criteria of R11-2-809(C) or (D) of this Section based on year-end financial statements for the latest completed fiscal year.
- C. The criteria of this subsection for successful completion of the financial test are:
  - 1. The owner or operator, and/or guarantor, shall have a tangible net worth of at least 10 times the costs estimated in the approved reclamation plan for reclamation.
  - 2. The owner or operator, and/or guarantor, shall have a tangible net worth of at least \$10 million.
  - 3. The owner or operator, and/or guarantor, shall submit to the State Mine Inspector a letter signed by the chief financial officer showing compliance with this Section.
  - 4. The owner or operator, and/or guarantor, shall either:
    - a. File financial statements annually with the U.S. Securities and Exchange Commission; or
    - b. Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet shall have assigned the firm a financial-strength rating of 4A or 5A.
  - 5. The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
- D. The criteria of this subsection for successful completion of the financial test are:
  - 1. The owner or operator, and/or guarantor, shall meet the financial test requirements of R11-2-811.
  - 2. The fiscal year-end financial statements of the owner or operator, and/or guarantor, shall be examined by an Independent Certified Public Accountant (ICPA) and included with the ICPA's report of the examination.
  - 3. The firm's year-end financial statements cannot include an adverse opinion, a disclaimer of opinion, or a "going concern" qualification.
  - 4. The owner or operator, and/or guarantor, shall submit to the State Mine Inspector a letter signed by the chief financial officer demonstrating compliance with this Section.
  - 5. If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the owner or operator, and/or guarantor, shall obtain a special report by an ICPA saying:
    - a. The ICPA has compared the data (which the letter from the chief financial officer specifies) as having been derived from the latest year-end financial statements of the owner or operator, and/or guarantor, with the amounts in the financial statements; and
    - b. No matters caused the ICPA to believe the specified data should be adjusted.
- E. If an owner or operator using the test to provide financial

*Arizona Administrative Register*  
**Notices of Final Rulemaking**

assurance finds the requirements of the financial test are no longer met, based on the year-end financial statements, the owner or operator shall obtain alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after the end of the year for which financial statements have been prepared.

- F. The State Mine Inspector may require reports of financial condition, at any time, from the owner or operator, and/or guarantor. If the State Mine Inspector makes a written finding, on the basis of the reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of subsection (C) or (D), the owner or operator shall obtain alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after notification of this written finding.
- G. After the initial submission of the items specified in subsection (C) or (D), the owner or operator shall send updated information to the State Mine Inspector within 90 days after the close of each succeeding fiscal year. This information shall consist of all items specified in subsection (C) or (D).

**R11-2-810. Cash Deposits**

- A. An owner or operator may use a receipt of deposit with the State Treasurer for the estimated costs of reclamation. The receipt of deposit shall show funds are available for reclamation costs. The owner or operator shall complete a treasurer's financial warranty deposit under the State Mine Inspector's instructions. The deposit shall be in the name of the state of Arizona.
- B. The owner or operator may cancel the deposit with the State Treasurer, with notification to the State Mine Inspector, if alternate financial assurance that meets the requirements of the Act and this Chapter is substituted.

**R11-2-811. Corporate Financial Tests**

An owner or operator may satisfy the requirements of this Section upon successful completion of a financial test specified in subsection (A) or (B). Successful completion is determined by meeting the criteria of subsection (C):

- A. The owner or operator shall have:
1. 2 of the following 3 ratios: a ratio of total liabilities to net worth of less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; or a ratio of current assets to current liabilities greater than 1.5;
  2. Net working capital and tangible net worth each at least 6 times the costs estimated in the approved reclamation plan for reclamation;
  3. Tangible net worth of at least \$10 million; and
  4. Assets located in the United States amounting to at least 90% of total assets or at least 6 times the costs estimated in the approved reclamation plan for reclamation.
- B. The owner or operator shall have all of the following:
1. A current rating for the most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;
  2. Tangible net worth at least 6 times the sum of the costs estimated in the approved reclamation plan for reclamation;
  3. Tangible net worth of at least \$10 million; and
  4. Assets located in the United States amounting to at least 90% of total assets or at least 6 times the costs estimated in the approved reclamation plan for reclamation.
- C. To show successful completion of the corporate financial test,

the owner or operator shall submit the following to the State Mine Inspector:

1. A letter signed by the owner's or operator's chief financial officer demonstrating compliance with this Section;
  2. A copy of the ICPA's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and
  3. A special report from the owner's or operator's ICPA to the owner or operator saying:
    - a. The ICPA has compared the data (which the letter from the chief financial officer specified) as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in the financial statements; and
    - b. No matters caused the ICPA to believe the specified data should be adjusted.
- D. After the initial submission of items specified in subsection (C), the owner or operator shall send updated information to the State Mine Inspector within 90 days after the close of each succeeding fiscal year. This information shall consist of all items specified in subsection (C).
- E. If the owner or operator no longer meets the requirements of subsection (A) or (B), the owner or operator shall send notice of intent to establish alternative financial assurance to the State Mine Inspector. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternative financial assurance that meets the requirements of the Act and this Chapter within 120 days after the end of the fiscal year.
- F. The State Mine Inspector may, based on reasonable belief that the owner or operator may no longer meet the requirements of subsection (A) or (B), require reports of financial condition by written request, at any time, from the owner or operator, in addition to those specified in subsection (C). If the State Mine Inspector makes a written finding, on the basis of the reports or other information, that the owner or operator no longer meets the requirements of subsection (A) or (B), the owner or operator shall provide alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after notification of this written finding.
- G. The State Mine Inspector may disallow use of this test on the basis of qualifications in the opinion expressed by the ICPA in the report on examination of the owner's or operator's financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The State Mine Inspector will evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after notification of this disallowance.
- H. The owner or operator is no longer required to submit the items specified in subsection (C) when:
1. An owner or operator substitutes alternate financial assurance that meets the requirements of the Act and this Chapter; or
  2. The State Mine Inspector releases the owner or operator's financial assurance under the Act and this Chapter.
- I. An owner or operator may meet the requirements of this Section by obtaining a written guarantee. The guarantor shall be the direct or higher-tier parent corporation of the owner or operator, a group of legal entities which are controlled through stock ownership by a common parent corporation, a firm whose parent corporation is also the parent corporation of the

owner or operator, or a firm with a substantial business relationship with the owner or operator. The guarantor shall meet the requirements for owners or operators in subsections (A) through (I) and shall comply with the terms of the guarantee. The certified copy of the guarantee shall accompany the items sent to the State Mine Inspector as specified in subsection (C). One of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a substantial business relationship with the owner or operator, this letter shall describe this substantial business relationship and the value received in consideration of the guarantee. The terms of the guarantee shall provide that:

1. If the owner or operator fails to perform the reclamation covered by the guarantee under the approved reclamation plan, the guarantor will do so or establish a trust fund as specified in the Act and this Chapter in the name of the owner or operator.
2. The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the State Mine Inspector. Cancellation may not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the State Mine Inspector, as evidenced by the return receipts.
3. If the owner or operator fails to provide alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after the owner or operator and the State Mine Inspector receive notice of cancellation of the corporate guarantee from the guarantor, the guarantor shall provide the alternate financial assurance in the name of the owner or operator.

**R11-2-812. Annuities**

- A. An owner or operator may provide the State Mine Inspector an annuity as financial assurance for reclamation. The annuity shall name the state of Arizona as the beneficiary. The financial institution, if any, shall be licensed to do business in the state of Arizona. Any incremental or annual payment shall be in an amount adequate to pay all costs of reclamation for land disturbed in that incremental or annual period.
- B. The owner or operator may cancel the annuity only if alternate financial assurance that meets the requirements of the Act and this Chapter is provided.

**R11-2-813. Final Action on Financial Assurance Mechanisms**  
The State Mine Inspector shall take final action on the financial assurance mechanism within 30 days after its receipt.

**R11-2-814. Incremental Financial Assurance**

If financial assurance is provided on an incremental basis as permitted under A.R.S. § 27-995, the amount shall be equal to or greater than the estimated cost of reclamation for surface disturbances created during that increment.

**R11-2-815. Financial Assurance Funding**

Except where limited by statute or this Article, financial assurance provided by the owner or operator may be funded by the owner, the operator, by any 3rd party, or by any combination of persons or entities.

**R11-2-816. Limited Individual Financial Assurance for Single Unit**

Whenever 2 or more persons or entities are named as owners or

operators in a single exploration operation or mining unit, the owners or operators may limit the scope of their individual financial assurances so long as their financial assurances, in total, assure performance of all conditions and requirements of the Act, this Chapter, and the approved reclamation plan.

**R11-2-817. Application for Release of Financial Assurance**

- A. The financial assurance shall not be released until all conditions and requirements of the Act and this Chapter have been satisfied.
- B. Within 60 days after receiving a request for release of a financial assurance, the State Mine Inspector, or a designated agent, shall inspect the exploration operation or mining unit to determine whether the owner or operator has fulfilled the requirements of the approved reclamation plan and either:
  1. Approve the release of the financial assurance or portion thereof; or
  2. Notify the owner and operator in writing that the financial assurance or portion thereof will not be released, the reasons why, and the measures necessary to satisfy the requirements of the approved reclamation plan.
- C. If a request to release is denied, the owner or operator may appeal the decision as provided by 12 A.A.C. 7, Article 6.
- D. The 60 days within which the State Mine Inspector, or a designated agent, shall respond to a request to release a financial assurance may be extended by mutual agreement if conditions prevent an inspection of the reclaimed land.
- E. The State Mine Inspector shall release the transferor's financial assurance mechanism upon receipt of alternate financial assurance that meets the requirements of the Act and this Chapter from the transferee.

**R11-2-818. Forfeiture Criteria/Forfeiture of Financial Assurance**

- A. A financial assurance mechanism filed with the State Mine Inspector or state agency is subject to forfeiture if any of the following exist:
  1. An exploration operation or mining unit has been completed, abandoned, or temporarily closed for a period greater than allowed by the Act or this Chapter without initiating reclamation;
  2. An exploration operation or mining unit has been completed, abandoned, or temporarily closed for a period greater than allowed by the Act or this Chapter and the owner or operator stops or suspends any ongoing reclamation as determined by the State Mine Inspector;
  3. The operator stops conducting business in the state of Arizona and does not transfer the approved reclamation plan and financial assurance to a new operator under A.R.S. § 27-928.
  4. The operator stops conducting business due to insolvency, bankruptcy, receivership, or misconduct, under A.R.S. § 27-905;
  5. The operator fails to comply with the conditions of the financial assurance mechanism; or
  6. The owner or operator fails to reclaim the surface disturbances under the approved reclamation plan, the Act, or this Chapter.
- B. Where the financial assurance has been filed with an agency of the federal government, the State Mine Inspector shall notify both the owner and operator and all principals and sureties by certified mail (return receipt requested), express mail (with a receipt), or hand delivery the financial assurance is subject to forfeiture and advise the owner and operator of the right to a

Notices of Final Rulemaking

hearing under A.R.S. Title 41, Chapter 6.

**R11-2-820. Avoidance of Forfeiture**

The State Mine Inspector shall advise both the owner and operator and all principals and sureties subject to R11-2-818 of the conditions under which forfeiture may be avoided. The conditions may include:

1. An agreement by the owner and operator or another party to perform reclamation operations under a compliance schedule, determined by the State Mine Inspector, which meets the conditions of the Act, this Chapter, and the approved reclamation plan.
2. A surety bond to complete the reclamation or a portion of the reclamation applicable to the financial assurance

increment if the surety can show an ability to complete the reclamation under the Act, this Chapter, and the approved reclamation plan.

**R11-2-821. Notice of Exercise of Forfeiture**

The State Mine Inspector shall provide written notice by certified mail (return receipt requested) of any exercise of forfeiture of financial assurance to both the owner and operator and all principals and sureties.

**R11-2-822. Full Release of Financial Assurance**

The full release of financial assurance pursuant to A.R.S. § 27-996(B), or as otherwise provided by the Act and this Chapter, shall be evidence the owner and or operator has reclaimed as required by the Act, this Chapter, and the approved reclamation plan.

**NOTICE OF FINAL RULEMAKING**

**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY**

**AIR POLLUTION CONTROL**

**PREAMBLE**

1. **Sections Affected:**  
R18-2-101
- Rulemaking Action:**  
Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**  
Authorizing statute: A.R.S. § 49-104  
Implementing statutes: A.R.S. §§ 49-404 and 49-425
3. **The effective date of the rules:**  
January 10, 1997
4. **A list of all previous notices appearing in the Register addressing the final rule:**  
Notice of Rulemaking Docket Opening:  
1 A.A.R. 143, March 3, 1995  
Notice of Rulemaking Docket Opening:  
2 A.A.R. 2054, May 24, 1996  
Notice of Proposed Rulemaking:  
2 A.A.R. 3140, June 14, 1996
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Mark Lewandowski or Martha Seaman, Rule Development Section  
Address: Department of Environmental Quality  
3033 North Central Avenue  
Phoenix, Arizona 85012-2809  
Telephone: (602) 207-2230 or (602) 207-2222 (Any extension may be reached in-state by dialing 1-800-234-5677, and asking for that extension.)  
Fax: (602) 207-2251
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**  
The Department of Environmental Quality (ADEQ) is amending its definition of volatile organic compounds (VOC) for purposes of preparing state implementation plans (SIPs) to attain the national ambient air quality standards for ozone under title I of the Clean Air Act (Act). This rule adds 4 compounds to the list of compounds excluded from the definition of VOC because these compounds have negligible photochemical reactivity. The rule follows recent identical federal rule makings. The 4 additional compounds excluded from the Arizona definition of VOC, along with the date and citation of the federal rule making that excluded each compound from the federal definition of VOC, are as follows:  
  - 1 Volatile methyl siloxanes (VMS); 59 FR 50693, (October 5, 1994)



- 2 Parachlorobenzotrifluoride (PCBTF); 59 FR 50693, (October 5, 1994)
- 3 Acetone; 60 FR 31633, (June 16, 1995)
- 4 Perchloroethylene; 61 FR 4588, (February 7, 1996)

In addition, technical corrections have been made to the names of 3 other compounds on the list, shown in the final rule at R18-2-101(116)(e),(h) and (i). These corrections were made in the federal rule making for VMS and PCBTF.

This rule will result in more accurate assessment of ozone formation potential and will assist Arizona to avoid exceeding the ozone health standard. The rule does this by allowing control efforts to focus on compounds that are actual ozone precursors rather than on compounds that have negligible photochemical reactivity.

Ground-level ozone, the main harmful ingredient in smog, is produced by the combination of VOC and nitrogen oxides. Ground-level ozone causes health problems because it damages lung tissue, reduces lung function, and sensitizes the lungs to other irritants. Animal studies have demonstrated that repeated exposure to ozone for many months can produce permanent structural damage in the lungs and accelerate the rate of lung function loss, as well as the lung aging period. Each year ground-level ozone is also responsible for several billion dollars worth of agricultural crop yield loss nationally. Studies also indicate that current ambient levels of ozone are responsible for damage to forests and ecosystems. (See 60 FR 4712)

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority to a political subdivision of this state:

Not applicable.

8. The summary of the economic, small business, and consumer impact:

This rule did not require an economic, small business and consumer impact statement (EIS) because it meets the conditions for exemption under A.R.S. § 41-1055(D)(3). This Section permits an agency to not prepare an EIS for 3 types of rules including "[a]ny rule making that decreases monitoring, record keeping or reporting burdens on agencies, political subdivisions, businesses or persons, unless the agency determines that increased costs of implementation or enforcement may equal or exceed the reduction in burdens."

In the EIS Section of the preamble for the proposed rule, ADEQ stated its belief that the rule would decrease burdens from monitoring, record keeping and reporting, and then specifically asked for information on whether the rule would increase or decrease any monitoring, record keeping or reporting burdens on agencies, political subdivisions, businesses or persons. ADEQ received no information on monitoring, record keeping or reporting burdens and only 1 general comment in favor of the rule. ADEQ is aware from regular informal communications that a number of national and state trade organizations have followed this rule making and are in favor of this rule.

The rule allows sources under the jurisdiction of ADEQ to no longer consider 4 compounds as VOC. VOC is a regulated air pollutant under R18-2-101(92)(b). Regulated air pollutants are subject to various monitoring, record keeping and reporting requirements under 18 A.A.C. 2. Thus, the rule will reduce monitoring, record keeping and reporting burdens on sources that emit those compounds, and therefore on businesses and persons. ADEQ has also determined that the agency costs of implementation will be small and due solely to the cost of this rulemaking. There will be no costs for enforcement. Increased costs of implementation or enforcement, therefore, do not equal or exceed the reduction in burdens. Based on the response and all information available, ADEQ did not prepare an EIS.

Based on information compiled by EPA and presented in their preambles, ADEQ would conclude, if it did prepare an EIS, that the benefits of the rule outweigh the costs. The rule will add 3 compounds and 1 class of compounds to the list of those exempted from consideration as volatile organic compounds (VOC) because of their negligible contribution to the formation of ground-level ozone.

Because deregulation of these substances as VOC may tend to encourage their use in various commercial and industrial processes, EPA considered any potential harm increased use may present to human health and the environment. For example, for VMS and PCBTF, EPA weighed the known toxic effects of the chemicals against the benefits of deregulation and concluded that the toxic effects did not warrant alteration of a decision to remove VMS and PCBTF from the VOC list. For acetone, EPA found in a related rule making in the same Federal Register that "acetone cannot reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring releases" and, therefore, deleted acetone from the list of toxic chemicals under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). (61 FR 31645)

With respect to VMS and PCBTF, EPA considered that exempting them from regulation as ozone precursors could contribute to the achievement of several important environmental goals. For example, the compounds could be used as substitutes for several compounds (e.g., methyl chloroform) that are listed as hazardous air pollutants (HAPs) under Section 112 of the Act, as well as substitutes for ozone depleting substances that are active in depleting the stratospheric ozone layer. EPA listed several volatile siloxanes as acceptable ozone depleting substance substitutes for metal cleaning, electronics cleaning, and precision cleaning.

Similarly, acetone can be used as a substitute for several compounds that are listed as HAPs under Section 112 of the Act. Methylene chloride and methyl chloroform are HAPs that are used for metal cleaning and for flexible polyurethane foam blowing. Other HAPs, such as toluene, are often used as solvents in paints and coatings. Acetone can substitute for these substances in some circumstances.

Acetone can also be used as a substitute for ozone depleting substances that are active in depleting the stratospheric ozone layer.



**Notices of Final Rulemaking**

Allowing wider use of acetone will facilitate the transition away from ozone depleting substances without adversely affecting efforts to control ground level ozone concentrations. For example, chlorofluorocarbon-11 (CFC-11) and methyl chloroform have been used as foam-blowing agents in the manufacture of polyurethane foam. These compounds are also used in metal cleaning in the aircraft manufacturing industry. Both CFC-11 and methyl chloroform are listed as Class I substances under title VI of the Act, i.e., as substances that have the highest stratospheric ozone-depleting potential. Acetone may be able to be used as a foam-blowing agent and cleaning agent in place of these chemicals.

Perchloroethylene is classified as a hazardous air pollutant under Section 112 of the Act and is a solvent commonly used in dry cleaning, maskant operations, and degreasing operations. This rule proposes to exclude it from the definition of VOC, which will result in a more accurate assessment of VOC ozone formation potential and help to avoid exceeding the ozone health standard. Perchloroethylene will continue to be regulated as a hazardous air pollutant under Section 112 of the Act. Before exempting perchloroethylene as a VOC, EPA issued regulations limiting emissions of perchloroethylene from dry cleaning and halogenated solvent cleaning and as a feedstock in the organic chemical manufacturing industry.

For more information, the EPA rule makings cited in Section 4 of this preamble should be consulted.

**9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

The changes are shown below by strikeout (deleted text) and underlining (added text):

**R18-2-101. Definitions**

In addition to the definitions prescribed in A.R.S. §§ 49-101, 49-401.01, 49-421, ~~49-521~~, and 49-541, ~~in the terms of this Chapter, unless otherwise specified, shall have the following meanings:~~

(No other changes were made to the proposed rule.)

The beginning text of R18-2-101 was changed slightly to improve clarity, conciseness and understandability. The deleted statutory Section, A.R.S. § 49-521, was repealed by Laws 1994, Ch. 353, § 31.

**10. A summary of the principal comments and the agency response to them:**

ADEQ received 1 comment from an industry group that generally supported the proposed rule's effect on perchloroethylene. ADEQ agreed with the comment.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None.

**12. Incorporations by reference and their locations in the rules:**

None.

**13. Was this rule previously adopted as an emergency rule?**

No.

**14. The full text of the rules follows:**

**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY**

**AIR POLLUTION CONTROL**

**ARTICLE 1. GENERAL**

Section

R18-2-101. Definitions

**ARTICLE 1. GENERAL**

**R18-2-101. Definitions**

In addition to the definitions prescribed in A.R.S. §§ 49-101, 49-401.01, 49-421, ~~49-521~~, and 49-541, ~~the terms of~~ in this Chapter, unless otherwise specified, ~~shall have the following meanings:~~

1. No change.
2. No change.
3. No change.
4. No change.
5. No change.
6. No change.
7. No change.
8. No change.
9. No change.
10. No change.

11. No change.
12. No change.
13. No change.
14. No change.
15. No change.
16. No change.
17. No change.
18. No change.
19. No change.
20. No change.
21. No change.
22. No change.
23. No change.
24. No change.
25. No change.
26. No change.
27. No change.
28. No change.
29. No change.
30. No change.

Notices of Final Rulemaking

31. No change.
32. No change.
33. No change.
34. No change.
35. No change.
36. No change.
37. No change.
38. No change.
39. No change.
40. No change.
41. No change.
42. No change.
43. No change.
44. No change.
45. No change.
46. No change.
47. No change.
48. No change.
49. No change.
50. No change.
51. No change.
52. No change.
53. No change.
54. No change.
55. No change.
56. No change.
57. No change.
58. No change.
59. No change.
60. No change.
61. No change.
62. No change.
63. No change.
64. No change.
65. No change.
66. No change.
67. No change.
68. No change.
69. No change.
70. No change.
71. No change.
72. No change.
73. No change.
74. No change.
75. No change.
76. No change.
77. No change.
78. No change.
79. No change.
80. No change.
81. No change.
82. No change.
83. No change.
84. No change.
85. No change.
86. No change.
87. No change.
88. No change.
89. No change.
90. No change.

91. No change.
92. No change.
93. No change.
94. No change.
95. No change.
96. No change.
97. No change.
98. No change.
99. No change.
100. No change.
101. No change.
102. No change.
103. No change.
104. No change.
105. No change.
106. No change.
107. No change.
108. No change.
109. No change.
110. No change.
111. No change.
112. No change.
113. No change.
114. No change.
115. No change.

116. "Volatile organic compounds (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. This includes any such organic compound other than the following:

- a. Methane.
- b. Ethane.
- c. Methylene chloride (dichloromethane).
- d. 1,1,1-trichloroethane (methyl chloroform).
- e. ~~1,1,1-trichloro-2,2,2-trifluoroethane~~ 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113).
- f. Trichlorofluoromethane (CFC-11).
- g. Dichlorodifluoromethane (CFC-12).
- h. Chlorodifluoromethane ~~(CFC-22)~~ (HCFC-22).
- i. Trifluoromethane ~~(FC-23)~~ (HFC-23).
- j. 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114).
- k. Chloropentafluoroethane (CFC-115).
- l. 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123).
- m. 1,1,1,2-tetrafluoroethane (HFC-134a).
- n. 1,1-dichloro 1-fluoroethane (HCFC-141b).
- o. 1-chloro 1,1-difluoroethane (HCFC-142b).
- p. 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124).
- q. Pentafluoroethane (HFC-125).
- r. 1,1,2,2-tetrafluoroethane (HFC-134).
- s. 1,1,1-trifluoroethane (HFC-143a).
- t. 1,1-difluoroethane (HFC-152a).
- u. Parachlorobenzotrifluoride (PCBTF).
- v. Cyclic, branched, or linear completely methylated siloxanes.
- w. Acetone.
- x. Perchloroethylene (tetrachloroethylene).
- u-y. Perfluorocarbon compounds which fall into these classes:
  - i. Cyclic, branched, or linear, completely fluorinated alkanes.

Notices of Final Rulemaking

- ii. Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations.
- iii. Cycle, branched, or linear, completely fluorinated tertiary amines with no unsaturations.
- iv. Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.
- 117. No change.

NOTICE OF FINAL RULEMAKING

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 2. ARIZONA RACING COMMISSION

PREAMBLE

1. **Sections Affected**  
R19-2-116  
R19-2-319
- Rulemaking Action:**  
Amend  
Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 5-104(A)(2)  
Implementing statute: A.R.S. §§ 5-113(F) and 5-114(D)
3. **The effective date of the rules:**  
January 10, 1997
4. **A list of all previous notices appearing in the Register addressing the final rule:**  
Notice of Docket Opening:  
2 A.A.R. 3977, September 13, 1996  
Notice of Proposed Rulemaking:  
2 A.A.R. 4154, October 4, 1996
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: William J. Walsh  
Address: Department of Racing  
3877 North 7th Street, Suite 201  
Phoenix, Arizona 85014  
Telephone: (602) 277-1704  
Fax: (602) 277-1165
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**  
The rules changes will alter the method of payment of breeders' awards for greyhound and horse breeders. These amendments were initiated because statutory changes created the possibility of a shortfall in the funding of breeders' awards if the awards were to be paid under the current rules.
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**  
None.
8. **The summary of the economic, small business, and consumer impact:**  
There is no negative effect.
9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**  
Used correct singular form for definitions. Deleted "payments" throughout the rules when redundant.
10. **A summary of the principal comments and the agency response to them:**  
There were no public comments.
11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**  
None.
12. **Incorporations by reference and their location in the rules:**  
None.
13. **Was this rule previously adopted as an emergency rule?**  
No.

**Arizona Administrative Register**  
**Notices of Final Rulemaking**

**14. The full text of the rules follows:**

**TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING**

**CHAPTER 2. ARIZONA RACING COMMISSION**

**ARTICLE 1. HORSE RACING**

R19-2-116. Arizona Bred Eligibility and Breeders' Award Payments

**ARTICLE 3. GREYHOUND RACING**

R19-2-319. Arizona Bred Eligibility and Breeders' Award Payments

**ARTICLE 1. HORSE RACING**

R19-2-116. Arizona Bred Eligibility and Breeders' Award Payments

- A. A breeder shall file a notarized certificate affirming eligibility under A.R.S. § 5-113(F), shall be filed with the Department. The certificate shall include name, color, and sex of the foal; name of the sire; name of the dam; date and location of foaling; The Jockey Club registration number or American Quarter Horse Association number; name, address, and telephone number of the breeder; a statement that the animal is eligible pursuant to A.R.S. § 5-113(F), and that the person shown as the breeder was the owner of the dam at the time of foaling; and such other information as may be required by the Department to determine eligibility and shall be signed by the breeder. A The breeder shall submit a copy of The Jockey Club registration papers shall be submitted with certificates for thoroughbreds.
1. Certification shall be is deemed to occur upon the Department's approval receipt of the completed certificate.
  2. The horse shall be certified by the Department at the time of the win to be eligible for an award.
- B. Any A permittee shall recognize any horse for which there is an Arizona Bred Certificate on file with the Department or an

association contractor shall be recognized by the permittee as an Arizona bred horse.

- C. Breeders' awards shall not are not to be paid on nominating, sustaining, or starting fees.

- D. Breeders' awards shall be calculated and paid as follows:

1. Quarterly payments: At the end of each fiscal year quarter, the Department shall calculate a payment factor by dividing the total monies in the Arizona Breeders' Award Fund at the end of the quarter by the total dollar value of purses won by eligible Arizona Bred horses and greyhounds during that quarter. The payment factor shall be multiplied by the amount of each purse won by an eligible animal to determine the amount of the award, except that if the payment factor exceeds .30, the factor used to calculate awards shall be .30. Any monies remaining in the fund after quarterly payments have been calculated and distributed shall be carried over and included in the quarterly payment calculations for each succeeding fiscal year quarter except as otherwise provided in this Section. Such payments shall be made not later than 30 days after the end of each quarter.
2. Premium awards: After awards for all quarters of each fiscal year have been calculated, the Department shall determine the amount of monies remaining in the fund. Amounts up to and including \$300,000 shall remain in the fund for distribution pursuant to paragraph (1) of this subsection. Any monies in excess of \$300,000 shall be distributed as follows:
  - a. The monies shall be divided into 3 premium pools:

\$10,000 or greater, excluding nominating, sustaining, and starting fees; and quarter horse claiming races in which the claiming price is \$75,000 or greater and the total purse is \$2,500 or greater.

**Premium Pool Premium**

i. Grade A greyhound races; thoroughbred allowance races, other than maiden allowance with a total purse of \$4,200 or greater; thoroughbred stakes races with a total purse of \$15,000 or greater, excluding nominating, sustaining and starting fees; thoroughbred claiming races in which the claiming price is \$20,000 or greater and the total purse is \$4,100 or greater; quarter horse allowance races, other than maiden allowance races, with a total purse of \$2,500 or greater; quarter horse stakes races with a total purse of \$10,000 or greater, excluding nominating, sustaining and starting fees; and quarter horse claiming races in which the claiming price is \$7,500 or greater and the total purse is \$2,500 or greater.

ii. Grade B greyhound races; thoroughbred maiden allowance races with a total purse of \$3,000 or greater; thoroughbred claiming races in which the claiming price is between \$10,000 and \$19,999.99 and the

**Premium Pool Distribution**

Thirty percent of the monies in excess of \$300,000 races.

*Arizona Administrative Register*  
**Notices of Final Rulemaking**

total purse is \$3,000 or greater; quarter horse maiden allowance races with a total purse of \$1,400 or greater; and quarter horse claiming races in which the claiming price is between \$3,500 and \$7,499.99 and the total purse is \$1,400 or greater.

Ten percent of the monies in excess of  
\$300,000

iii. Grade C greyhound races; thoroughbred claiming races in which the claiming price is between \$5,000 and \$9,999.99 and the total purse is \$2,500 or greater; and quarter horse claiming races in which the claiming price is between \$2,000 and \$3,499.99 and the total purse is \$1,200 or greater.

- b. The Department shall calculate the premium award payment factors by dividing the total monies in each of the premium pools by the dollar value of purses won in each premium pool category. The premium award payment factor for each category shall be multiplied by the amount of each purse won by an eligible animal within the category to determine the amount of the premium award.
- a. The monies shall be divided into 3 premium pools:
- b. The Department shall calculate the premium award payment factors by dividing the total monies in each of the premium pools by the dollar value of purses won in each premium pool category. The premium award payment factor for each category shall be multiplied by the amount of each purse won by an eligible animal within the category to determine the amount of the premium award.
- c. Such payments shall be made not later than 60 days after the end of each fiscal year.
- 3. If a win is reported to the Department after awards have been calculated and paid pursuant to paragraphs (1) and (2) of this subsection, the award shall be calculated using the payment factor and premium award factor, if applicable, for the period in which the win occurred and shall be paid from any monies carried forward pursuant to this Section. If no carry forward is available, the award shall be calculated using the payment factor and premium award factor, if applicable, for the next quarter or year and shall be paid from monies available in the fund during the next quarter or year.

**D. The Department shall calculate and pay breeders' awards to eligible breeders.**

**1. Definitions**

- a. "Quarterly Breeders' Award" means an amount of money based on the quarterly breeders' award payment factor determined by the Department each fiscal year by October 30.
- b. "Substitute Breeders' Award" means an amount of money based on a substitute payment factor because of the lack of sufficient money to pay conventional Quarterly Breeders' Awards.
- c. "Supplemental Breeders' Award" means an amount of money that corrects a shortfall between conventional Quarterly Breeders' Awards and Substitute Breeders' Awards.
- d. "End-of-year Bonus Award" means an amount of money that may be paid to breeders from available monies that remain in the breeders' award fund after payment of Quarterly Breeders' Awards, Substitute Breeders' Awards and Supplemental Breeders'

**Awards.**

- 2. The Department shall pay awards at the end of each fiscal year quarter, provided that the total amount of the awards payments does not exceed the total amount of money available in the fund less the amount required to be set aside for contingent liabilities in subsection (D)(8).
- 3. Quarterly Breeders' Awards. Before October 30 of each year, the Department shall determine a quarterly breeders' award payment factor that will be applied during the entire fiscal year. The payment factor determined by the Department is not subject to appeal.
  - a. The Department shall evaluate anticipated revenues for the breeders' award fund and anticipated purses for eligible Arizona-bred animals and set the payment factor at a level that permits recipients of quarterly breeders' awards to receive awards throughout the fiscal year based on the same payment factor.
  - b. The Department shall notify representatives of each breeders' association of the quarterly breeders' award payment factor in writing before October 30 of each year.
  - c. The Department shall calculate quarterly breeders' awards by multiplying the amount of each purse won by an eligible animal during that quarter by the quarterly breeders' award payment factor established for the fiscal year.
  - d. The Department shall make quarterly breeders' awards not later than 30 days after the end of each quarter, unless full quarterly breeders' awards cannot be made due to the lack of available money in the fund.
- 4. Substitute Breeders' Awards. The Department shall make substitute breeders' awards if there are sufficient monies in the fund to allow for an award but not enough monies to provide for full payments of quarterly breeders' awards based on the quarterly breeders' award payment factor.
  - a. The Department shall determine the substitute payment factor by dividing the total amount of monies in the Arizona breeders' award fund at the end of the quarter less the amount required to be set aside for contingent liabilities in subsection (D)(8) by the total amount of purses won by eligible Arizona-bred animals during that quarter.
  - b. The Department shall calculate substitute breeders' awards by multiplying the amount of each purse won by an eligible animal during that quarter by the substitute payment factor for that quarter.
- 5. End-of-year bonus pool. After payment of all quarterly breeders' awards and any substitute breeders' awards has

**Notices of Final Rulemaking**

- been calculated, the Department shall determine the amount of monies remaining in the fund. The end-of-year-bonus pool is the amount of monies remaining in the Arizona breeders' award fund after the payment of all quarterly breeders' awards for the fiscal year less the amount required to be set aside for contingent liabilities in subsection (D)(8).
6. Supplemental Breeders Awards. The Department shall first pay any monies in the end-of-year bonus pool in the form of supplemental breeders awards to recipients of substitute breeders' awards.
    - a. The Department shall pay supplemental breeders' awards in an amount equal to the difference between the substitute breeders' award and the quarterly breeders' award the breeder would have received if there had been enough in the fund to pay an award based on the quarterly award payment factor.
    - b. In the event the end-of-year bonus pool cannot pay supplemental breeders' awards to make up for the shortfall to all substitute breeders' award recipients, the Department shall pay supplemental breeders' awards to all breeders eligible to receive a supplemental breeders' award on a pro-rata basis.
    - c. A breeder is eligible to receive a supplemental breeders' award from the end-of-year bonus pool only if the breeder received a substitute breeders' award during that fiscal year.
    - d. The Department shall not make supplemental breeders' awards if all eligible breeders received quarterly breeders' awards during the fiscal year.
  7. End-of-year Bonus Awards. The Department shall pay end-of-year bonus awards if monies remain in the end-of-year bonus pool following any supplemental payments.
    - a. The Department shall determine an end-of-year bonus payment factor by dividing the monies in the end-of-year bonus pool by the total amount of purses won by an eligible animal during the fiscal year.
    - b. The Department shall calculate end-of-year bonus awards by multiplying the amount of each purse won by an eligible animal by the bonus payment factor.
  8. Contingent liabilities. The Department shall retain \$10,000 in the Breeders' Award fund for contingent liabilities.
  9. The Department shall not make quarterly breeders' awards, substitute breeders' awards, supplemental breeders' awards or end-of-year bonus breeders' awards if the total amount available for distribution is less than \$10,000. In the event the Department does not pay an award because less than \$10,000 is available for distribution, the Department shall carry forward the amount in the fund for payment of awards when the Department next calculates awards.
  10. Appeal of Director's Rulings
    - a. The Director shall make the final decision concerning a breeders' award.
    - b. The Department shall give written notice of the decision to an applicant by mailing it to the address of record filed with the Department.
    - c. After service of the Director's decision, an aggrieved party may obtain a hearing under A.R.S. §§ 41-1092.03 through 41-1092.11.
    - d. The aggrieved party shall file a notice of appeal with the Department within 30 days after receiving the notice prescribed in R19-2-116(D)(10)(h).
    - e. The Department shall notify the Office of Administrative Hearings, which shall schedule and conduct the hearing.
- E. No change.  
F. No change.  
G. No change.

**ARTICLE 3. GREYHOUND RACING**

**R19-2-319. Arizona Bred Eligibility and Breeders' Award Payments**

- A. A breeder shall file a notarized certificate affirming eligibility under A.R.S. § 5-113(F) shall be filed, on forms provided by the Department, with the Department. The form certificate shall include name, color, and sex of the animal; name of the sire; name of the female; date and location of whelping; National Greyhound Association registration number; left and right ear identification numbers; name, address, and telephone number of the breeder; a statement that the animal is eligible pursuant to A.R.S. § 5-113(F) and that the person shown as the breeder was the owner of the female at the time of whelping; and such other information as may be required by the Department to determine eligibility and shall be signed by the breeder. A The breeder shall submit a copy of the National Greyhound Association registration papers shall be submitted with the certificate.
  1. Certification is deemed to occur upon the Department's approval receipt of the completed certificate.
  2. The greyhound shall be certified by the Department at the time of the win to be eligible for an award.
- B. Any A permittee shall recognize any greyhound for which there is an Arizona Bred Certificate on file with the Department shall be recognized by the permittee as an Arizona bred greyhound.
- C. Breeder's Breeders' awards are not to be paid on nominating, sustaining, or starting fees.
- D. Breeders' awards shall be calculated and paid as follows:
  1. Quarterly payments: At the end of each fiscal year quarter, the Department shall calculate a payment factor by dividing the total monies in the Arizona Breeders' Award Fund at the end of the quarter by the total dollar value of purses won by eligible Arizona Bred horses and greyhounds during that quarter. The payment factor shall be multiplied by the amount of each purse won by an eligible animal to determine the amount of the award, except that if the payment factor exceeds .30, the factor used to calculate awards shall be .30. Any monies remaining in the fund after quarterly payments have been calculated and distributed shall be carried over and included in the quarterly payment calculations for each succeeding fiscal year quarter except as otherwise provided in this Section. Such payments shall be made not later than 30 days after the end of each quarter.
  2. Premium awards: After awards for all quarters of each fiscal year have been calculated, the Department shall determine the amount of monies remaining in the fund. Amounts up to and including \$300,000 shall remain in the fund for distribution pursuant to paragraph (1) of this

**Notices of Final Rulemaking**

subsection. Any monies in excess of \$300,000 shall be distributed as follows:

a. The monies shall be divided into 3 premium pools:

**Premium Pool Premium**

i. Grade A greyhound races; thoroughbred allowance races, other than maiden allowance with a total purse of \$4,200 or greater; thoroughbred stakes races with a total purse of \$15,000 or greater, excluding nominating, sustaining and starting fees; thoroughbred claiming races in which the claiming price is \$20,000 or greater and the total purse is \$4,100 or greater; quarter horse allowance races, other than maiden allowance races, with a total purse of \$2,500 or greater; quarter horse stakes races with a total purse of \$10,000 or greater, excluding nominating, sustaining and starting fees; and quarter horse claiming races in which the claiming price is \$7,500 or greater and the total purse is \$2,500 or greater.

**Premium Pool Distribution**

Thirty percent of the monies in excess of \$300,000 races.

ii. Grade B greyhound races; thoroughbred maiden allowance races with a total purse of \$3,000 or greater; thoroughbred claiming races in which the claiming price is between \$10,000 and \$19,999.99 and the total purse is \$3,000 or greater; quarter horse maiden allowance races with a total purse of \$1,400 or greater; and quarter horse claiming races in which the claiming price is between \$3,500 and \$7,499.99 and the total purse is \$1,400 or greater.

**Premium Pool Distribution**

Thirty percent of the monies in excess of \$300,000

iii. Grade C greyhound races; thoroughbred claiming races in which the claiming price is between \$5,000 and \$9,999.99 and the total purse is \$2,500 or greater; and quarter horse claiming races in which the claiming price is between \$2,000 and \$3,499.99 and the total purse is \$1,200 or greater

Ten percent of the monies in excess of \$300,000

b. The Department shall calculate the premium award payment factors by dividing the total monies in each of the premium pools by the dollar value of purses won in each premium pool category. The premium award payment factor for each category shall be multiplied by the amount of each purse won by an eligible animal within the category to determine the amount of the premium award.

c. Such payments shall be made not later than 60 days after the end of each fiscal year.

3. If a win is reported to the Department after awards have been calculated and paid pursuant to paragraphs (1) and (2) of this subsection, the award shall be calculated using the payment factor and premium award factor, if applicable, for the period in which the win occurred and shall be paid from any monies carried forward pursuant to this Section. If no carry forward is available, the award shall be calculated using the payment factor and premium award factor, if applicable, for the next quarter or year and shall be paid from monies available in the fund during the next quarter or year.

D. The Department shall calculate and pay breeders' awards to eligible breeders.

1. Definitions.

a. "Quarterly Breeders' Award" means an amount of

money based on the quarterly breeders' award payment factor determined by the Department each fiscal year by October 30.

b. "Substitute Breeders' Award" means an amount of money based on a substitute payment factor because of the lack of sufficient money to pay conventional Quarterly Breeders' Awards.

c. "Supplemental Breeders' Award" means an amount of money that corrects a shortfall between conventional Quarterly Breeders' Awards and Substitute Breeders' Awards.

d. "End-of-Year Bonus Award" means an amount of money that may be paid to breeders from available monies that remain in the breeders' award fund after payment of Quarterly Breeders' Awards, Substitute Breeders' Awards and Supplemental Breeders' Awards.

2. The Department shall pay awards at the end of each fiscal year quarter, provided that the total amount of the awards payments does not exceed the total amount of money available in the fund less the amount required to be set aside for contingent liabilities in subsection (D)(8).

3. Quarterly Breeders' Awards. Before October 30 of each year, the Department shall determine a quarterly breed-



*Arizona Administrative Register*  
**Notices of Final Rulemaking**

ers' award payment factor that will be applied during the entire fiscal year. The payment factor determined by the Department is not subject to appeal.

- a. The Department shall evaluate anticipated revenues for the breeders' award fund and anticipated purses for eligible Arizona-bred animals and set the payment factor at a level that permits recipients of quarterly breeders' awards to receive awards throughout the fiscal year based on the same payment factor.
  - b. The Department shall notify representatives of each breeders' association of the quarterly breeders' award payment factor in writing before October 30 of each year.
  - c. The Department shall calculate quarterly breeders' awards by multiplying the amount of each purse won by an eligible animal during that quarter by the quarterly breeders' award payment factor established for the fiscal year.
  - d. The Department shall make quarterly breeders' awards not later than 30 days after the end of each quarter, unless full quarterly breeders' awards cannot be made due to the lack of available money in the fund.
4. Substitute Breeders' Awards. The Department shall make substitute breeders' awards if there are sufficient monies in the fund to allow for an award but not enough monies to provide for full payments of quarterly breeders' awards based on the quarterly breeders' award payment factor.
- a. The Department shall determine the substitute payment factor by dividing the total amount of monies in the Arizona breeders' award fund at the end of the quarter less the amount required to be set aside for contingent liabilities in subsection (D)(8) by the total amount of purses won by eligible Arizona-bred animals during that quarter.
  - b. The Department shall calculate substitute breeders' awards by multiplying the amount of each purse won by an eligible animal during that quarter by the substitute payment factor for that quarter.
5. End-of-year bonus pool. After payment of all quarterly breeders' awards and any substitute breeders' awards has been calculated, the Department shall determine the amount of monies remaining in the fund. The end-of-year-bonus pool is the amount of monies remaining in the Arizona breeders' award fund after the payment of all quarterly breeders' awards for the fiscal year less the amount required to be set aside for contingent liabilities in subsection (D)(8).
6. Supplemental Breeders Awards. The Department shall first pay any monies in the end-of-year bonus pool in the form of supplemental breeders awards to recipients of substitute breeders' awards.
- a. The Department shall pay supplemental breeders' awards in an amount equal to the difference between the substitute breeders' award and the quarterly breeders' award the breeder would have

received if there had been enough in the fund to pay an award based on the quarterly award payment factor.

- b. In the event the end-of-year bonus pool cannot pay supplemental breeders' awards to make up for the shortfall to all substitute breeders' award recipients, the Department shall pay supplemental breeders' awards to all breeders eligible to receive a supplemental breeders' award on a pro-rata basis.
  - c. A breeder is eligible to receive a supplemental breeders' award from the end-of-year bonus pool only if the breeder received a substitute breeders' award during that fiscal year.
  - d. The Department shall not make supplemental breeders' awards if all eligible breeders received quarterly breeders' awards during the fiscal year.
7. End-of-year Bonus Awards. The Department shall pay end-of-year bonus awards if monies remain in the end-of-year bonus pool following any supplemental payments.
- a. The Department shall determine an end-of-year bonus payment factor by dividing the monies in the end-of-year bonus pool by the total amount of purses won by an eligible animal during the fiscal year.
  - b. The Department shall calculate end-of-year bonus awards by multiplying the amount of each purse won by an eligible animal by the bonus payment factor.
8. Contingent liabilities. The Department shall retain \$10,000 in the Breeders' Award fund for contingent liabilities.
9. The Department shall not make quarterly breeders' awards, substitute breeders' awards, supplemental breeders' awards or end-of-year bonus breeders' awards if the total amount available for distribution is less than \$10,000. In the event the Department does not pay an award because less than \$10,000 is available for distribution, the Department shall carry forward the amount in the fund for payment of awards when the Department next calculates awards.
10. Appeal of Director's Rulings
- a. The Director shall make the final decision concerning a breeders' award.
  - b. The Department shall give written notice of the decision to an applicant by mailing it to the address of record filed with the Department.
  - c. After service of the Director's decision, an aggrieved party may obtain a hearing under A.R.S. §§ 41-1092.03 through 41-1092.11.
  - d. The aggrieved party shall file a notice of appeal with the Department within 30 days after receiving the notice prescribed in R19-2-319(D)(10)(b).
  - e. The Department shall notify the Office of Administrative Hearings, which shall schedule and conduct the hearing.

- E. No change.
- F. No change.
- G. No change.